

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 146 OF 2011

ROBIN MOMANYI PLAINTIFF

V E R S U S

1. C.M.C MOTORS GROUP LIMITED 1ST DEFENDANT

2. ENG. STEPHEN K. MUTISYA 2ND DEFENDANT

RULING

1. Plaintiff filed this suit on 3rd June 2011 against the 1st Defendant as the only Defendant seeking an injunction to restrain the said Defendant from repossessing motor vehicle Registration No. KAV 043R. On 6th June 2011 an interim injunction was issued.
2. On 1st Defendant's application dated 26th July 2011 2nd Defendant was joined in this action on the ground that he had purchased and was in possession of the subject motor vehicle. Despite the joining of the 2nd Defendant on or about 10th November 2011 2nd Defendant has not filed a Defence after a Memorandum of Appearance was filed on his behalf on 6th December 2011.
3. 1st Defendant has by Notice of Motion dated 5th February 2014 sought the dismissal of this suit for want of prosecution. That application was not opposed by the Plaintiff. The 2nd Defendant however opposed the application on the ground that he wished to file a Defence and Counter-claim. 2nd Defendant did not inform the Court why such a Defence has not been filed since December 2011 when an appearance was filed on his behalf and more importantly there is no pending application for leave to file such a Defence. It is therefore clear that the Defendant does not deserve indulgence of this Court.
4. If any authority is required to show where the duty the Court lays on a party who files a case I believe the best was as was stated in the case **NETPLAN EAST AFRICA LIMITED -Vs- INVESTMENT & MORTGAGES BANK LIMITED [2013]eKLR** as follows-

“In Fitzpatrick Vs Batger & Co. Ltd [1967]2 ALL ER 657 Lord Denning, citing his decision in Reggentine Vs Beecholme Bakeries Ltd [1967] 111 Sol. 216, said as follows;

‘It is the duty of the Plaintiff’s advisers to get on with the case. Public policy demands that the business of the courts should be conducted with expedition ... they delay is far beyond anything we can excuse. This action has gone to sleep for nearly two years. It should now be dismissed for want of prosecution.’”

5. The Plaintiff has inordinately delayed in proceeding with this case. Upto today Plaintiff has not filed its documents or witness statements which ought to have been filed together with the Plaintiff as per Order 3 Rule 2 of the Civil Procedure Rules. Any further delay in this matter can only be prejudicial to the Defendants. It is for that reason I order as follows-
 - a. **This suit is hereby dismissed for want of prosecution with costs to the 1st Defendant.**

b. The 1st Defendant is awarded costs of Notice of Motion dated 5th February 2014.

DATED and DELIVERED at MOMBASA this 31ST day of JULY, 2014.

MARY KASANGO

JUDGE