

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 12 OF 2003

THOMAS LEWANGA MWAINGIA..... 1ST PLAINTIFF

RONALD OKIRO MTOTO 2ND PLAINTIFF

-VERSUS-

KISHORE NANJI DEFENDANT

RULING

1. Plaintiffs filed this case some eleven (11) years ago on 20th January 2003. Defendant filed his Defence on 13th May 2003. NO other pleadings were filed thereafter and accordingly pleadings closed fifteen (15) days after 13th May 2003. Plaintiffs took no action thereafter in this suit and the next document filed is a Notice of Motion application by Defendant seeking dismissal of this suit for want of prosecution. That Notice of Motion is dated 8th November 2013. It is the application under consideration.
2. The firm of Advocates, Tindika & Company Advocates, representing the Plaintiffs filed an application dated 24th January 2014 seeking leave of the Court to cease to act for the Plaintiffs. That application remained unprosecuted. I however did note that attached to the affidavit in support to that application is an acknowledgement signed by Plaintiffs indicating that they had collected their entire file from their Advocates Tindika & Co. Advocates.
3. The Notice of Motion under consideration was unopposed. The affidavit in support of that application sworn by Samir Inamdar deposed that the matters relating to this suit occurred in 1997 and in view of the years that the suit has remained unprosecuted fair trial cannot proceed.
4. It is clear that the Plaintiffs have lost interest in this suit. Moreso having taken their entire file from their Advocates they may well have decided not to prosecute the suit. I will just refer to the case-

“Fitzpatrick Vs Batger & Co. Ltd (1967)2 ALL ER 657 where Lord Denning, citing his decision in Reggentine Vs Beecholme Bakeries Ltd [1967]111 Sol. Jo. 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 the 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. No doubt Plaintiffs and their Advocate did fail to deal with this suit expeditiously accordingly it is only right that the Defendant’s application be allowed. This suit is hereby dismissed for want of prosecution with costs of the suit and of Notice of Motion dated 8th November 2013 being awarded to the Defendant.

It is so ordered.

DATED and DELIVERED at MOMBASA this 25TH day of SEPTEMBER, 2014.

MARY KASANGO

JUDGE