



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
HCCC NO 429 OF 2000

HANNAH WANJIRU WANG'ANG'A.....PLAINTIFF

VERSUS

- 1. IBRAHIM CHEGE**
- 2. APOLLO GACHAU NDUTI**
- 3. ZAKARIA KINYA KWERI**
- 4. MICHAEL MAGONDU KIMANI**
- 5. ZACHARY KARIUKI KURIA**
- 6. COLLINS M MWAI**

(Sued as the officials of

AFRICAN HOLY GHOST CHURCH).....DEFENDANTS

RULING "B"

- 1.** By a considered ruling dated 6th and delivered on 14th June 2013 (Waweru, J) the Plaintiff's suit was dismissed with costs for want of prosecution. The delay in prosecution was about ten (10) years.
- 2.** Nearly nine (9) months later the Plaintiff has come back to court by **notice of motion dated 4th March 2014** seeking leave to appeal against the aforesaid order of dismissal. Amongst the grounds for the application is this one –
 - “2. That the Plaintiff was not aware that the court had made its ruling which determined the entire suit and only recently became aware of the said ruling after receiving a letter from her former advocates.”**
- 3.** This ground is elaborated as follows in the supporting affidavit sworn by the Plaintiff –

“4. That I was not aware that the court had made its ruling which determined the entire suit.

5. That I only recently became aware of the said ruling when I received a letter through the post from my previous advocates informing me of the position relating to the said suit.

6. That prior thereto, I had visited the said advocates’ offices on several occasions and would be informed by the clerk that a hearing date would be obtained once the court diary for the year 2014 was opened and released by the court registry staff.

7. That I was further informed that the advocate would in due course write to me formally on the hearing date obtained to enable me attend a pre-trial briefing.

8. That given the said assurances, I patiently waited to be called for pre-trial briefing but unfortunately this never materialized.

9. That I made so many visits to the said advocates’ offices as the lack of communication had got me anxious. Despite this, no information was forthcoming and it was therefore shocking when I received the letter from the advocate informing me that my entire suit had been dismissed with costs.

10. That it was at this point that I decided to terminate the services of the firm of Gatumuta & Co and seek representation by another firm.”

4. The Defendants have opposed the application by a **replying affidavit filed on 29th April 2014**. It is sworn by the 5th Defendant, Zachary Kariuki Kuria. Grounds of opposition emerging from this affidavit include –

(i) That there has been inordinate and unreasonable delay in applying.

(ii) That no satisfactory explanation for this delay has been offered.

5. I have considered the submissions of the learned counsels appearing. No authorities were cited. I have also perused the court record, including the ruling dated 6th and delivered on 14th June 2013. The Plaintiff then, just as now, blamed her previous advocates. In the present application she has stated that she “only recently became aware of the said ruling when I received a letter through the post from my previous advocates informing me of the position relating to the suit”. **She does not give the date of the letter, or when she received it! Why?** She could easily have annexed a copy of the letter to her affidavit; why did she not do so? Could a copy of the letter have given the lie to present protestations?

6. Litigation must come to an end, particularly litigation which the owner showed no inclination at all for ten (10) years to prosecute.

7. Whether or not to grant leave to appeal is the discretion of the court. In this case I decline to exercise the court’s discretion in the Plaintiff’s favour. I decline to grant leave to appeal. The application at hand is dismissed with costs. It is ordered.

DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF OCTOBER 2014

H P G WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER 2014