



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HCCC NO 223 OF 2001

JOCYLINE MOYI GUDA

FREDRICK GUYA NGAYAYA.....PLAINTIFFS

VERSUS

MOBIL OIL (KENYA) LTD

CICILIA KAMANDU.....DEFENDANTS

RULING

1. The 1st Plaintiff was the erstwhile employee of the 1st Defendant's predecessor in title. Her employment was terminated. The 2nd Plaintiff was the husband of the 1st Plaintiff. Their claims against the Defendants in this suit are in malicious prosecution. In addition the 1st Plaintiff claimed in respect to the termination of her employment, and also in respect to some two motor vehicles she had purchased while in employment with some financing from the 1st Defendant. The Defendants filed defence and counterclaim.

2. Together with the plaint the 1st Plaintiff applied on 09/02/2001 for certain injunctive reliefs in respect to the two motor vehicles pending hearing and determination of the suit. On 8th May 2003, while dismissing the application, the court (Aluoch, J) further ordered –

“2. The parties do file issues and proceed to obtain a date for hearing.

3. The current *status quo* concerning the two vehicles do remain in force until the suit is heard and determined.”

3. That *status quo*, apparently, was that the 1st Defendant had already repossessed motor vehicle registration number **KAL 216 Y make Nissan Sunny** while the 1st Plaintiff retained possession of motor vehicle registration number **KAG 463 U make Mitsubishi Lancer**.

4. It appears that on 26th February 2010 the 1st Plaintiff died, without the suit ever having been

prosecuted. There does not appear to have been any application for substitution and the 1st Plaintiff's suit therefore abated by law.

5. The 1st Defendant has now applied by **notice of motion dated 12/02/2013** seeking the main order, in effect, that the 2nd Plaintiff's suit be dismissed for want of prosecution. There is another prayer which is, in effect, an alternative to the dismissal prayer, that the court do review and either set aside or vary the injunctive order made on 8th May 2003. This application is the subject of this ruling.

6. The application is stated to be brought under **Orders 17, 40 and 45** of the **Civil Procedure Rules, 2010** (the **Rules**) without citing any specific rule. This is a very lazy way of doing things and is not acceptable at all. Dismissal of the suit is sought upon the ground that the Plaintiffs have never taken any step towards prosecution of the suit since it was filed some thirteen (13) years ago. Setting aside or variation of the "*status quo* order" is sought upon the ground that the Plaintiffs never did anything towards prosecution of their suit since they obtained the order ten (10) years ago. The 1st Defendant therefore seeks this order so that it can dispose of motor vehicle registration number KAL 216Y make Nissan Sunny to mitigate loss. There is a supporting affidavit sworn by one **Benedicta Karimi Kiara**, a Legal Counsel of the 1st Defendant. It sets out the factual basis for the application.

7. The 2nd Plaintiff was duly served with the application. He did not file any response thereto, and there was no appearance for him at the hearing.

8. As already pointed out, the 1st Plaintiff's suit abated by law some twelve months after her death as no application was made to substitute some other person in her place. See **Order 24, rule 3(2)** of the Rules.

9. As for the suit by the 2nd Plaintiff, he has offered no explanation at all for the long delay in prosecuting the same. He has not bothered to file any replying affidavit or appear at the hearing. I am satisfied in the circumstances, particularly the long passage of time, that it will no longer be possible to have a fair trial of the 2nd Plaintiff's case. The same is hereby dismissed with costs to the 1st Defendant.

10. The 1st Plaintiff's suit having abated by law, and the 2nd Plaintiff's suit having now been dismissed for want of prosecution, the "*status quo* order" of 8th May 2003 is hereby set aside for avoidance of doubt. Those will be the orders of the court.

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