



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 733 OF 2004

KABAGE & MWIRIGI INSURANCE BROKERS LIMITED.....PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL.....1ST DEFENDANT

THE REGISTERED TRUSTEES OF THE

NATIONAL SOCIAL SECURITY FUND.....2ND DEFENDANT

PERMANENT SECRETARY TO

THE TREASURY.....3RD DEFENDANT

PUBLIC PROCUREMENT DIRECTORATE.....4TH DEFENDANT

RULING

1. The 2nd defendant has filed a Notice of Motion dated 17th February, 2013 seeking that this suit be dismissed for want of prosecution. The application is expressed to be brought under Order 17 Rule 2(3) and Order 51 Rule 1 of the Civil Procedure Rules, 2010.
2. The motion is based on the grounds stated on the body of the application and the supporting affidavit of Hope Mwashumbe sworn on 12th February, 2013. She averred that a reply to defence was filed more than eight (8) years ago and no steps have since been taken to prosecute this suit. It was further averred that the 2nd defendant stands to be prejudiced since it stands to lose its evidence and/or potential witnesses.
3. The application is not opposed.
4. Order 17 Rule 2(3) of the Civil Procedure Rules allows either party to apply for dismissal of a suit for want of prosecution where no steps to prosecute have been taken for one (1) year. The test applied by courts in an application for dismissal for want of prosecution is whether or not the delay in setting down the suit for hearing is inordinate and inexcusable. (See: *Ivita v. Kyumbu [1984] KLR 441*).
5. I have taken the liberty to peruse this file. The first action taken was the filing of the plaint on 7th July, 2004. The next action from the plaintiff's end was the filing of an application to cease acting for the plaintiff by Gitobu Imanyara and Co. Advocates on 27th May, 2014.
6. When this matter came up for hearing on 14th October, 2014 Mr. Njiru who held brief for Imanyara for the plaintiff sought for leave to withdraw the application to cease acting for the plaintiff and the application was consequently marked as withdrawn. He further sought leave to respond to the instant application whereupon he was given fourteen (14) days within which to file

a response. This application was subsequently set down for hearing on 31st October, 2014. When this application came up for hearing on the said date, the plaintiff's counsel had not filed any response thereto.

7. It is my considered view that the filing of an application to cease acting does not constitute a step to prosecute a matter. This action has stalled for close to eight (8) years which I consider inordinate. I find it unjust to leave the defendants hanging onto an immobile suit indefinitely. The said delay coupled with the plaintiff's failure to offer any reason for the delay at all leaves me with no choice but to dismiss the suit for want of prosecution. I accordingly dismiss this suit for want of prosecution with costs to the defendants.

Dated, Signed and Delivered in open court this 28th day of November, 2014.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

.....for the 1st Defendant

.....for the 2nd Defendant

.....for the 3rd Defendant

.....for the 4th Defendant