



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 440 OF 2010**

**ELIJAH OKENYE KENYANYA T/A BONO AGENCIES ..... PLAINTIFF**

**VERSUS**

**CITY COUNCIL OF NAIROBI .....1<sup>ST</sup> DEFENDANT**

**MOCO AFRICA LIMITED ..... 2<sup>ND</sup> DEFEDNANT**

**RULING**

The first defendant filed an application by way of Notice of Motion Dated 7<sup>th</sup> January, 2014 under Sections 3 and 3A of the Civil Procedure Act, Order 17 Rule 2 (3) and Order 51 Rule 1 of the Civil Procedure Rules for orders that the plaintiff's suit be dismissed for want of prosecution and costs be awarded to the 1<sup>st</sup> defendant.

The grounds upon which the orders are sought are that this suit was filed on 27<sup>th</sup> September, 2010 but has not been heard despite it being set down for hearing once and that the plaintiff has completely lost interest in prosecuting the same.

The application is supported by an affidavit sworn by Karisa Iha the Director, legal services, of the 1<sup>st</sup> defendant. The plaintiff on the other hand replied by stating that the file had been missing and that is the reason why the prosecution of the suit has been delayed.

I have perused the record before me and noted that the plaintiff has not filed any witness statements as required under the rules and even if the suits were to be listed for hearing it cannot go on.

The 1<sup>st</sup> defendant on the other hand has filed a list of witnesses and documents but no witness statements are on record. Both parties therefore have not complied with the pre trial steps to facilitate the hearing of this case.

After the application was filed, the plaintiff filed a pre-trial questionnaire under Order 11 Rule 2 and a statement of issues dated 30<sup>th</sup> June, 2014. It would appear therefore the plaintiff is still desirous to have his suit heard and the court should be inclined to sustain the suit rather than strike it out for want of prosecution.

Accordingly, I decline to grant the orders sought in the Notice of Motion dated 7<sup>th</sup> January, 2014 but impress upon the parties to take immediate steps to facilitate expeditious disposal of this suit. Costs shall be in the cause.

**Dated and delivered at Nairobi this 17<sup>th</sup> Day of December, 2014.**

**A.MBOGHOLI MSAGHA**

**JUDGE**