



REPUBLIC OF KENYA

High Court at Nakuru

Civil Case 127 of 2007

ELIJAH C LANGATPLAINTIFF

VERSUS

PAUL LELELIDEFENDANT

DAVID SIGEI2nd DEFENDANT

RULING

The defendant filed a Notice of Motion dated 8th December 2011, seeking dismissal of the suit for want of prosecution under the provision of order 17 rule 3 and order 51 Rule 1 of the Civil Procedure Rules. The Application is supported by an affidavit sworn by Karanja Mbugua, the defendants Advocate.

The Defendants case is that this suit was filed in 2007. The plaintiff has not taken any steps to fix the suit for full or even partial hearing or otherwise prosecute the same. The result is that it is evident that the plaintiff is no longer interested in pursuing the claim yet the onus is on him to not only prosecute but also do so expeditiously.

The affidavit of service filed by Stanley Maina Waiganjo on 29th April 2013, states that the plaintiffs advocate upon being served with copies of the Application dated 8th December 2011, declined to sign for the same stating that **“his client had abandoned this matter”**. On 11th April 2013, the plaintiff was personally served with the same Application and hearing notice but he did not appear in court either in person or through counsel.

The decision whether or not to dismiss a suit is purely discretionary. However, like any other discretion the same must be based on reason and should neither be based on sympathy nor exercised capriciously .

In *Sheikh Vrs Gupta and others Nairobi HCCC No. 916 of 1960 (1969) E.A Trevelyan, J stated as follows:*

“.....in deciding whether or not to dismiss a suit under order 6, a court will be slow to make an order if it is satisfied that the hearing of the suit can proceed without further delay that the defendant will suffer no hardship or that there has been flagrant and culpable inactivity on the part of the plaintiff”

In this case, I find that there has been flagrant and culpable inactivity on the part of the plaintiff who has given no indication whatsoever that he is interested in pursuing his claim.

I find the Notice of Motion dated 8th December 2011 merited and dismiss the plaintiff's suit for want of prosecution with costs of the suit to the Defendant. The Applicant will bear the costs of this application.

Dated, signed and delivered this 30th Day of April 2013

L. N. WAITHAKA

JUDGE

PRESENT

Mr Karanja Mbugua for defendants

N/A for plaintiffs

Stephen Mwangi - Court Clerk