



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC CASE NO. 109 OF 2012

MARY NYAWIRA MURIUKI.....1ST DEFENDANT/RESPONDENT

STEPHEN KINYANJUI & ANOTHER.....2ND DEFENDANT/RESPONDENT

RULING:

This is a Notice of Motion dated 5th March, 2013 brought by counsel for the Defendants/Applicants herein. The application is premised under **Section 1A, 1B, and 3A, of the Civil Procedure Act Cap 21 Laws of Kenya**. The applicants sought for orders that the Plaintiff's suit herein be struck out for being incompetent, without merit and otherwise an abuse of the court process. Applicant's also prayed for costs of the application.

The application was premised on these grounds; that the Plaintiff has never served any summons upon the 1st Defendant, despite the fact that, the suit was filed more than one year ago; Further that, the Plaintiff has lost interest in the hearing and determination of this suit after the application for injunction was dismissed; That it is in the interest of justice that this suit be dismissed for inaction particularly in regard to summons.

The application was also supported by the annexed affidavit of **Henry Mung'athia Narangwi** advocate for 1st Defendant herein who is with the conduct of the matter. The application was not opposed. The Court has considered the application generally and the provisions of law and makes the following findings.

The application is premised **under Section 1A & 1B of the Civil Procedure Act**. These sections provides as follows:

Section 1A :-

“The overriding objectives of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of Civil disputes.”

Section 1B provides:-

“ For the purpose of furthering the overriding objective specified in 1A, the Court shall handle all the matters presented before it for the purpose of attaining the following aims:-

- a. ----
- b. ----

(c) -----

(d) The timely disposal of the proceedings and all other proceedings in the Court at a cost affordable by the respective parties...”.

It is evident from the pleadings herein that the Plaintiff filed her Complaint on 2/3/2012 and a Notice of Motion on even date. Interim Orders were granted. The Notice of Motion was dismissed on 24/7/2012 by Justice Kimondo. After the dismissal of the Notice of Motion, the Plaintiff did not take any action. There is allegation by the 1st Defendant that the Plaintiff did not serve him with the summons. It is therefore evident that the Plaintiff lost interest in the prosecution of this matter.

One of the aims of the **overriding objective** as provided by *Section 1A, of the Civil Procedure Act* is to facilitate expeditious resolution of Civil disputes. This suit is one of such civil disputes.

Also as provided by *Section 1B, of the Civil Procedure Act*, in furthering the overriding objective, the court is supposed to handle all matters before it for the purpose of attaining **timely disposal** of the proceedings in court.

The applicant has brought this application for striking out this suit as Plaintiff has lost interest in it. In striking out the suit, the court will have facilitated expeditious disposal of matters before it. The Plaintiff after failing to obtain an injunction did not bother to serve the summons.

The action by the Plaintiff is therefore an abuse of the court process. The court finds that this is one suit which is a candidate for striking out. In the case of *Murri Vs Murri (1999), EA 212* it was held that:-

“The summary remedy of striking out is applicable whenever it can be shown that the action is one which cannot succeed or is in some way an abuse of the process of the court”.

The action of the Plaintiff having a suit in court with unserved summons and no action being taken since 24/7/2012 amounts to abuse of the court process. *Order 5 Rule 1(6) of the Civil Procedure Rules* is also very clear on the issue of collection of summons. The Plaintiff did not oppose the application.

Consequently, this Court allows the 1st Defendant application dated 25/3/2013 entirely with costs to the 1st Defendant.

It is so ordered.

Dated, Signed and delivered this **12th day of July 2013.**

L.N. GACHERU

In the Presence of:-

M/s Nganga holding brief Njoroge for the Plaintiff

None Appearance for the 1st Defendant

None Appearance for the 2nd Defendant

L.N. GACHERU

JUDGE

Court.

Ruling read in open Court in the presence of M/s Nganga holding Brief for Njoroge for Plaintiff. None appearance for Defendant.

L.N. GACHERU

JUDGE

12/7/2013