



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURT
CIVIL DIVISION
CIVIL CASE NUMBER 552 OF 2006.

ISAAC GICHIA MBUGUA

AND JOSEPH MBAI MBUGUA (The Legal

Representatives of MOSES MBUGUA MWANGI).....PLAINTIFF

-VERSUS-

BANK OF BARODA INDIA.....DEFENDANT

R U L I N G

The defendant applicant Bank of Baroda India has brought this Notice of Motion dated the 13/2/2013 under order 17 rule 2 (3) and Order 51 rule (1) of the Civil Procedure Rules seeking that the plaintiff's suit be dismissed for want of prosecution and that the plaintiff do pay the defendants the costs of this application and of the suit.

The application is grounded on 3 grounds stated on the face of the application together with the supporting affidavit of George Gitonga Murugara.

The plaintiff was served but didn't respond neither did he appear on the date the matter was heard on the 9/10/2013. I have read the said affidavit plus I have gone through the court file. This suit was filed on the 26/5/2006 by the plaintiff.

An amended plaint was filed on the 13/6/2006 and a defence on the 10/7/2006. An amended defence was filed on the 27/10/2006.

The plaintiff thereafter filed an application to have the defendant's amended defence struck out and judgment to be entered as prayed. The application filed by the parties were withdrawn by consent on the 15/2/2007 and parties agreed to have the matter proceed to full hearing, On the 2/3/2010 the parties agreed to have the application dated 11/12/2009 allowed. It sought to have Isaac Gichia Mbugua and Joseph Mbai Mbugua to be made the legal representative in place of the deceased plaintiff Moses Mbugua Mwangi.

On the 3/3/2010 the plaintiffs have done nothing to fix the matter for hearing. It is definitely more than a

year since the 3/3/2010 counsel for the applicant has given a detailed account of what has been happening in the matter. The defendant moved this court under order 17 (2) (3), Order 17 (2) (3) states that any party in the suit may apply for its dismissal as provided in Sub rule (1).

Sub rule (1) provides that in any suit in which no application has been made on step taken by either party for one year. The court may grant notice in writing to the parties to show cause why the suit should not be dismissed and if cause isn't shown to its satisfaction it may dismiss the suit.

The plaintiff was properly served. There has been no response. It is now about 3 years starting from the time the last application was dealt with. No explanation has been offered. I agree with counsel that the plaintiff is indolent and the suit should be dismissed for want of prosecution.

I therefore find merit in the application and grant prayers 1 & 2 of the application dated 13/2/2013.

Orders accordingly.

Dated, signed and delivered in open court this 11th day of October, 2013

R.E OUGO

JUDGE

In the presence of:

.....**For the plaintiff**

.....**for the defendant**

.....**Court clerk**