



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO 422 OF 2008**

**NANCY WAMBUI WAMBUGU.....PLAINTIFF**

**VERSUS**

**1. HOLY CROSS PARISH**

**2. FATHER ANDREW MASSAWE**

**3. JOHN CARDINAL NJUE.....DEFENDANTS**

**R U L I N G**

- 1.** This is an application by the Defendants (**notice of motion dated 27<sup>th</sup> August 2013**) for dismissal of the Plaintiff's suit for want of prosecution. It is brought under **Order 17, rule 2 (1) & (3) of the Civil Procedure Rules, 2010** (the **Rules**).
- 2.** The grounds for the application stated on the face thereof are –
  - i. That since close of pleadings on 7<sup>th</sup> November 2008 (more than four (4) years ago) the Plaintiff has not taken any steps to prosecute her suit.
  - ii. That the indefinite pendency of the suit is “highly prejudicial” to the Defendant.
- 3.** There is a supporting affidavit sworn by the 2<sup>nd</sup> Defendant. It sets out the history of the litigation, including a previous similar application by the Defendants which was refused by the Court (Maraga, J) on 6<sup>th</sup> April 2011. The Court then was satisfied that the delay in prosecuting the case was attributable to internal problems “in the Plaintiff's advocate's office. The Court felt that the Plaintiff should be given a chance to prosecute her suit.
- 4.** More than two (2) years down the line the suit still has not been prosecuted, and hence the new application by the Defendants.
- 5.** Part of the Plaintiff's response to the application was to file chamber summons dated 27<sup>th</sup> September 2013 for leave to amend the plaint, which is pending. But she also filed a replying affidavit sworn by her on 27<sup>th</sup> September 2013. The Plaintiff attributes this further delay in prosecuting her suit (from 6<sup>th</sup> April 2011) to her “failing health during the period of inaction”. No medical report or other evidence of this “failing health” has been exhibited. Had there been such evidence I would have been inclined to exercise the Court's discretion in her favour a second time, given the nature of her suit.

6. Regrettably, even after indulgence once before by the Court, the Plaintiff has not taken any step for a further two years plus to prosecute her suit. This is inordinate delay in the circumstances that has not been credibly explained. Having escaped once from dismissal of her case for want of prosecution the Plaintiff ought to have been more active in prosecution of the same. There is now no justification for this case to continue hanging over the Defendants' heads.

7. I will allow the notice of motion dated 27<sup>th</sup> August 2013. The Plaintiff's suit is hereby dismissed for want of prosecution. The Defendants shall have costs of the suit (including the application). It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF NOVEMBER 2013**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER 2013**