

IN THE HIGH COURT OF KENYA

CIVIL SUIT NO. 54 OF 2008

M/S MEENYE & KARIMA T/A MEENYE & KIRIMA ADVOCATEPLAINTIFF

1. MUNICIPAL COUNCIL OF MOMBASA

3. THE STANDARD LIMITEDDEFENDANTS

By Way of Notice of Motion application dated the 22nd day of January, 2013 and which is expressed to be brought under order 51 rule 1, order 17 rule 2 of the Civil Procedure Rules 2010 and Section 3A of the Civil Procedure Act, the Applicant seeks orders that the suit as against the 3rd Defendant be dismissed for Want of prosecution.

That such delay to prosecute is inordinate and in excusable.

The application is supported by the affidavit of Mr. Billing Counsel for the 3rd Defendant who depones that the suit was filed on 13th March, 2008 and the 3rd Defendant filed defence on 31st March, 2008. The 1st and 2nd Defendants similarly filed their defences.

That the suit was fixed for hearing on 2nd November, 2009 but the plaintiff through its Advocate wrote a letter indicating that their client was not available owing to personal matters. That fresh hearing dates were fixed for 25th October, 2010 when another letter was written indicating that the plaintiff would not be available as he was engaged in another matter in Nairobi High Court.

Further that the counsel for the 3rd Defendant wrote a letter to the plaintiff on 4th November, 2010 inviting them with a view to fixing a date for hearing but since then a period of over two years nothing has been done.

Further that the deponent was subsequently arraigned in Court on 10th December, 2010 and charged in Corruption Case No. 22 of 2011. That the issues in the corruption case were substantially connected with the issues in the present case.

It is noted that the suit was first fixed for hearing on 2nd November, 2009 by the plaintiffs counsel. All parties were notified the reasons why it could not proceed on the hearing date.

I do find that there has been delay in ensuring that this suit is heard and determined expeditiously. Counsel for the plaintiff did fix hearing dates but the hearing was frustrated by other intervening factors.

Though there has been delay I find the same was excusable bearing in mind that litigation must come to a close. I do order that parties do take hearing dates within seven (7) days from to date.

Ruling delivered dated and signed this **13th** day of **November, 2013**.

M. MU YA

13TH NOVEMBER, 2013

Learned Counsel for Plaintiff

Learned Counsel for Defendant Miss Odhiambo holding brief Guran