

SHUWEKA SULEIMAN ALI.....PLAINTIFF

VERSUS

1. NATIONAL BANK OF KENYA LIMITED

2. ROAD SAFETY NETWORK

3. HEMED MOHAMED HEMED.....DEFENDANTS

**Coram:
Mwera, J.
Mokua for Plaintiff
Mutua for Defendants
Court Clerk Furaha**

R U L I N G

On 5th July, 2012 the motion dated 18th May, 2012 came up for hearing. The 1st defendant prayed that the suit herein be dismissed for want of prosecution, citing sections 3A, 1A, 1B of Civil Procedure Act, Order 17 rule 2 (3), Order 51 rule 1 of the Civil Procedure Rules.

The grounds advanced for that prayer were that since closing of pleadings, the plaintiff had taken no steps to set down the suit for hearing. Then on 21st November, 2012 the court had ordered that the plaintiff should set down the suit for hearing within six months. That was not done yet the 1st defendant/applicant, holder of a charge over LR No. 4238/30 was being prejudiced. Prejudice was in the form of the value of the subject land being eroded while the debt over it continued to escalate. A supporting affidavit accompanied the motion.

The plaintiff filed grounds of opposition to the effect that this application was made prematurely i.e. before six months ordered expired. It was an abuse of the process of court and ought to be dismissed. It lacked any merit.

On the said 5th July, 2012 parties agreed to dispose of the present motion by filing written submissions by 13th July, 2012. Apparently, the cause was not fixed on 13th July, 2012 but it came on 17th July, 2012. Only the 1st defendant/applicant had filed submission so the court granted the plaintiff time to do likewise by 18th July, 2012. That was not done and the ruling proceeded as per the application, grounds of opposition and the applicants' submission. Having set out contents of the application, its supporting affidavit and the grounds of opposition earlier, next is the applicants' submission.

The court was told that in an earlier and similar application, to dismiss suit, Justice Okwengu (not Kasango) ruled that the plaintiff had six months with effect from 21st November, 2011 to prosecute the suit or the 1st defendant would be justified to reapply for its dismissal. The six months elapsed on 21st May, 2012 and this application was filed on 23rd May, 2012. The suit may now be dismissed.

And this court agrees. The suit herein stands dismissed for want of prosecution since 2006. Costs to the 1st defendant. The court gave the plaintiff another opportunity to set the suit down for hearing. The plaintiff ignored it. It cannot be argued that interests of justice do not favour the applicant in such circumstances. Order of dismissal is hereby granted.

Delivered on 28th August, 2012.

J. W. MWERA
JUDGE