



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

HCCC NO.90 OF 1996

**ELIUD BARASA IMAYOPLAINTIFF/
RESPONDENT**

~VRS~

JOHN OMUSE EMOIT.....DEFENDANT/APPLICANT

RULING

This is a ruling on a notice of motion dated 06/04/2010 brought by the Defendant/Applicant John Omuse. It seeks for dismissal of the Plaintiff's suit for want of prosecution. In the supporting affidavit, the Applicant complains of delay in the case. He depones that the suit has not been fixed for hearing with view of having it finally determined. The suit is 14 years old and the Applicant is sickly. He prays that since the Respondent has lost interest in this case, the same ought to be dismissed.

The application was opposed by the respondent relying on grounds of opposition filed on 16/4/2010 and dated the same date. Mr. Mateshe for Kraido argues that the application is incurably defective and incompetent. The law under which the application is brought is not cited. Further that this case is not dormant and the Applicant does not deserve the orders sought.

As for the law under which the application is brought, I agree that the same is not quoted in the notice of motion. However, the applicant is in person and this court does not expect him to know the law and procedure in order to cite the law. Under the amendment to the Civil Procedure Act, this court is more concerned with the overriding objective to facilitate the just and expeditious, proportionate and affordable resolution of civil disputes. The application is hereby treated as competent for the purposes of these provisions.

This case was filed in court in 1996. It is therefore 14 years old. It has not been heard for various reasons

and no one party may be blamed as opposed to the other. The Plaintiff changed his counsel last year. The last time the matter was fixed for hearing was on 05/11/08. It is the Defendant who had taken the date. During the hearing on 08/06/2009 the Plaintiff's counsel applied for adjournment on grounds that he needed time to peruse the file despite the fact that the notice of change of advocates had been filed one year before the date of hearing. The counsel had sufficient time to prepare for the hearing of the suit. The Plaintiff has not shown much interest for his case which is evident in the court record since the last date of hearing taken by the Defendant. It is now one year and the Plaintiff has not fixed a hearing date. I am in agreement that the Plaintiff has lost interest in his case and it deserves to be dismissed. The Defendant has taken initiative to have the suit set down for hearing as provided for by Order XVI Rule 5 (d). He has now applied for dismissal of the suit for non-prosecution which falls under the same rule. The period allowed for dismissal under Rule 5 is only three months. In the case before me, the time lapse since the matter was adjourned is one year and four (4) months.

I find the application merited and allow as prayed. The Plaintiff's suit is hereby dismissed with costs to the Defendant.

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F. N. MUCHEMI

JUDGE

Ruling delivered and dated this 8th day of March, 2011 in the presence of Mr. Mateshe for the Plaintiff and the Defendant in person.

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F. N. MUCHEMI

JUDGE