

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 691 of 2005

YOBESH AMORO.....PLAINTIFF

VERSUS

THE HERITAGE A.I.I. INSURANCE COMPANY LIMITED.....DEFENDANT

RULING

By a Notice of Motion dated 6th January, 2009 the defendant applied to have the plaintiff's suit dismissed with costs for want of prosecution. The application is premised on the grounds that the cause of action arose way back in August, 2005. The suit was filed in December 2005, and plaintiff has not taken steps to prosecute this matter. The last time action was taken in this matter is when the plaintiff had sought to strike the defence, which application was denied vide the court ruling delivered on 4th May 2007. Thereafter the plaintiff did not take any steps to list the matter for hearing or to prepare the suit for hearing. According to the defendant, the plaintiff has lost interest in the matter and the suit should be dismissed for want of prosecution.

This application was opposed, counsel for the plaintiff relied on her replying affidavit sworn on 20th April 2009, Counsel for the plaintiff has given a chronology of events that took place from the time the ruling disallowing the application to strike the defence was delivered on 4th May 2007. Firstly the court diary for 2007 was closed; secondly counsel was bereaved having lost a sister in a tragic fire that occurred in the Nakumatt Downtown building. She urged the court to grant her an opportunity to have the matter fixed for hearing.

I have gone through this file including the pleadings; I am inclined in the interest of justice to allow the plaintiff a chance to prosecute this matter. I note the plaintiff has been less than diligent in prosecuting this matter, I also take note that the court diary also gets filled up very early. The defendant will have the costs of this application assessed at kshs.10,000/= to paid within fourteen (14) days from to date. The plaintiff shall fix this matter for hearing within three months, failure to which the suit will stand dismissed for want of prosecution with costs to the defendant.

Ruling signed and read on 27th November 2009 at Nairobi

M.K. KOOME

JUDGE