

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 533 of 2006

GENETICS TECHNOLOGIES INTERNATIONAL LIMITEDPLAINTIFF

VERSUS

PYRETHRUM BOARD OF KENYADEFENDANT

RULING

1. The Defendant filed this application by way of Notice of Motion under **Order 16 Rule 5** of the **Civil Procedure Rules**, seeking to have the Plaintiff's suit dismissed for want of prosecution. The application is premised on the grounds that the Plaintiff failed to prosecute the matter since 24th June 2008, when it was last in court. On 4th August 2008, the Defendant served the Plaintiff with a request for particulars which the plaintiff failed to respond to. It is apparent that the Plaintiff has lost interest in this matter and the continued pendency of the suit prejudices the Defendant. The Plaintiff has also not complied with order made by the court for discovery, and there are no efforts to show that the Plaintiff is serious in ensuring this matter is heard.

2. This application was opposed by the Respondent. Reliance was placed on the Replying Affidavit by Mrs. Jane Ondiek, the Advocate for the Plaintiff. Counsel has given reasons why there was delay in prosecuting this matter. She was faced with personal problems which are stated in the Replying Affidavit. She has explained how after recovering from the personal problems, she tried to serve the Defendant's counsel with the particulars sought, and to comply with the order made on 24th June 2008 requiring the parties to complete discovery and all the pre-trial interlocutory within sixty (60) days.

3. It is clear from the record and also admitted by counsel for the Plaintiff that there was inordinate delay in taking steps to prosecute this matter. Counsel for the Plaintiff has given an explanation that the delay was occasioned by personal problems which befell her which had nothing to do with plaintiff. Counsel has also demonstrated that she has now filed a list of documents and in my humble opinion the problems of counsel for the Plaintiff should not result her client's suit being dismissed.

4. As it was set out in the Court of Appeal Case of **DT Dobbie & Co. Ltd. Versus Muchina 1982 KLR** as per Madan JA

“The court should aim at sustaining rather than terminating a suit. A suit should only be struck out if it is so weak that it is beyond redemption and incurable by amendment. As long as a suit can be injected with life by amendment, it should not be struck out.”

Taking the totality of the matters raised in this application, it is in the interest of justice that the Plaintiff's case be sustained on condition that the Plaintiff will pay the Defendant costs of this application assessed at Kshs.15,000 within two (2) weeks and also fix this matter for hearing within six (6) months failure to comply with the above condition the plaintiff's suit will stand dismissed for want of prosecution.

RULING READ AND SIGNED ON **4th December 2009** AT NAIROBI.

M.K. KOOME

JUDGE