

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Suit 94 of 1996

MWAVUO MWALEWA PLAINTIFF

V E R S U S

BAHATI SERVICE STATION DEFENDANT

RULING

I think it is fair to say that both the plaintiff and his advocates have not been diligent in prosecuting this case. In his affidavit in support of his application to further amend his plaint which application was filed on 26th May 2006 but was not fixed for hearing until exactly one year later, the plaintiff claims that at the time he filed this suit he was still undergoing treatment and the extent of his injuries was not known. It was known when he was re-examined in 19th May 1997. From that time he did not apply to amend his plaint to state all the injuries he suffered until 8th Mach 2000. When the application was allowed on 9th February 2001 the amendment was not done as required. Apart from missing out on some issues the plaintiff says he wanted included the purported amendments were not underlined in red as required. That anomaly was pointed out to them by counsel for the defendant during the hearing on 6th November 2002 forcing the plaintiff's advocate to seek an adjournment to put the plaintiff's house in order.

After that adjournment it took the plaintiff and his advocate another three and half years to file this application, which as I have said was fixed for hearing one year after it was filed.

That is not the conduct of a diligent plaintiff and I entirely agree with counsel for the defendant that the plaintiff has been indolent.

If this had been an application seeking to dismiss this suit for want of prosecution, I would have not hesitated to dismiss it. However since this is an application for amendment even if I dismiss it the suit will still remain pending. In the circumstances I allow this application and order that the plaintiff shall draw and file a proper re-amended plaint and pay the defendants costs for this application which I assess at shs. 10,000/- within 15 days failing either or both of which this appclaitin shall stand dismissed.

DATED and delivered this 5th day of June 2007.

D. MARAGA

JUDGE