

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA**

Civil Case 354 of 1990

JAIRUS LICHUNGUPLAINTIFF

VERSUS

NZOIA SUGAR CO. LTD.DEFENDANT

R U L I N G

The Defendant, Nzoia Sugar Company, Ltd., sought in its application by Notice of Motion dated 21-1-04, an order that the suit herein be dismissed for want of prosecution because no step had been taken for a period of over 5 years and the Plaintiff, Jairus Lichungu, was not interested in the case. The hearing of the case was stood over generally on 18.01.99, and when it was set down for hearing again on 21-04-99 no action was taken. The said application was supported by the affidavit of the Defendant's advocate, Mr. G. Fwaya.

The Plaintiff opposed the application by his replying affidavit sworn on 30-06-04.

When the application came up for hearing before me, Mr. Fwaya, learned counsel for the Defendant, urged the court to dismiss the application because no action had been taken to prosecute it for over 5 years. He contended that the Plaintiff had showed that he had no interest in the case. He attacked the reasons given by the Plaintiff in the replying affidavit and contended that the allegation that the Plaintiff was looking for Shs.3,500/= for five years was not serious nor was the excuse that it was because the plaintiff's advocate had relocated that delay occurred.

Mr. Athung'a, learned counsel for the Plaintiff, submitted that the failure by the advocate on record for the plaintiff to set the suit down for hearing should not be visited on the Plaintiff. Further, he submitted, there was break down in communication between the plaintiff and his advocates following the latter's relocation of Chambers. Mr. Athung'a submitted that the Plaintiff's advocates did not set the suit down for hearing because they thought the Plaintiff had lost interest in it.

I have perused the application which is premised on Order XVI Rule 6 of the Civil Procedure Rules. As a matter of policy, a court should be slow to order dismissal of a suit for want of prosecution where the suit can proceed to hearing without delay. The object of the court's discretionary power to dismiss for want of prosecution is to remove congestion of files in court registries by getting rid of cases which are moribund where parties have lost interest in the litigation. This is done to enable the court to disencumber itself of records where parties are no longer interested in prosecuting suits due to loss of interest (*see VICTORY CONSTRUCTION CO. versus A. N. DUGGAL (1962) EA 697.*)

In making a decision under Order XVI Rule 6, the court is guided by what serves the best interest of justice.

After weighing one thing with another, it seems quite clear to me that the Plaintiff has lost interest in the suit and there is no justification for maintaining it. Litigation should not be kept pending indefinitely and where the Plaintiff's loss of interest is manifested by failure to take any step to prosecute for a considerable period of time, the court may dismiss the suit. The reasons given by the Plaintiff's counsel clearly show that the latter was convinced their client had lost interest in the suit. And the reasons advanced in opposition to the dismissal of the application were not serious. I think the interest of justice

will be better served by an order for dismissal. In the circumstances, I allow the application and dismiss the suit under Rule 6 of Order XVI of the Civil Procedure Rules with costs to the Defendant.

Dated, signed and delivered at Kakamega this 24th day of February, 2006.

G. B. M. KARIUKI

J U D G E