

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO. 2645 OF 1996

DR. NDWIGA NJUE MWACHANDI.....1ST PLAINTIFF

DR. VICTOR KABURU MUURU

T/A OUTERING NURSING HOME.....2ND PLAINTIFF

V E R S U S

CHARLES MUNGAI NGANGA.....1ST DEFENDANT

A.I MUCHIRI T/A DOLLINE AUCTIONEERS.....2ND DEFENDANT

R U L I N G

The Notice of Motion dated 14th December, 2002 was taken out by the Defendant seeking dismissal of the main suit for want of prosecution. Order 16 Rule 5 of the Civil Procedure Rules is invoked.

The Applicant simply says the suit was filed on 28th October, 1996.

The pleadings were closed on 11th November, 1996 but since then no action has been taken to advance it further.

The Plaintiffs however say that is not so. Yes the suit was filed on 28th October, 1996 and a defence was filed on 11th November, 1996 and, therefore, pleadings are deemed to have been closed 14 days thereafter UNDER order 6 Rule 11 Civil Procedure Rules. But they said they had filed another suit earlier HCCC 1839/96 between the same parties and on the same subject matter. That suit was filed in September, 1996 seeking a mandatory injunction to reverse an eviction from rented premises while this suit was filed to recover special and general damages arising from the eviction. They applied in this suit by Chamber summons dated 15th January, 1999 seeking consolidation of the two suits. That application was due for hearing on 17th May, 1999 but it was withdrawn by consent of the parties and an order was issued that the two matters be heard separately but before the same judge. Since then the Plaintiffs Counsel depones that new Advocates for the Plaintiffs came on board and placed on record an Amended Complaint on 22nd March, 2000. It is not clear whether this was with the leave of the Court but no application has been made to strike it out. Hearing dates were also sought in both matters in February, 2000, April, 2000 and eventually on 27th June, 2001 when hearing dates for 20th and 21st November, 2001 were given and hearing Notices served on the Defendants. The matter was not however confirmed for hearing at the callover. There were no other dates for the year 2001 and so the Plaintiffs invited the Defendants Advocates to fix fresh dates in February, 2002. This application however filed on 14th December, 2001 and set down for hearing on 26th February, 2002.

Shown the endorsement on the Court file that indeed the case was fixed for hearing on 20th and 21st November, 2001, after prior notification to them. Counsel for the Defendants responded that he was not aware of the entry and if he was he would not have filed the application.

On that concession I think it is unnecessary to analyse any further the submissions of the Plaintiffs which establish that indeed there has been some activity aimed at advancing the hearing and determination of this matter. The application is, therefore, devoid of merit and is dismissed with costs.

DATED at NAIROBI this 8th day of March, 2002.

P.N. WAKI

JUDGE