



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC SUIT NO. 874 OF 2012**

**LILIAN MMBONE ABABU.....PLAINTIFF**

**VERSUS**

**NAIROBI AVIATION COLLEGE LIMITED.....1<sup>ST</sup> DEFENDANT**

**MIKE OYOO WAGUNDA.....2<sup>ND</sup> DEFENDANT**

**CO-OPERATIVE BANK LIMITED.....3<sup>RD</sup> DEFENDANT**

**COMMISSIONER OF LANDS.....4<sup>TH</sup> DEFENDANT**

**RULING**

The 1<sup>st</sup> Defendant filed the application dated 20/12/2018 seeking the dismissal of the Plaintiff's suit for want of prosecution and orders that the 1<sup>st</sup> Defendant's counterclaim dated 22/10/2013 be set down for hearing. The application was made on grounds set out on the face of the application and the supporting affidavit of Peter Iwuoni Manyuru, the 1<sup>st</sup> Defendant's managing director, sworn on 20/12/2018. He deponed that the Plaintiff filed suit on 22/11/2012 and was granted an interim *ex parte* order on the same date, restraining the 1<sup>st</sup> Defendant from attaching her assets. The orders lapsed on 05/12/2012, and have never been extended. He further deponed that the Plaintiff later filed the amended plaint dated 27/07/2013 together with an amended notice of motion application dated 27/07/2013. The Plaintiff filed the application dated 08/07/2013 seeking stay of execution of her movable properties but that application was dismissed by the court. The Plaintiff then filed the application dated 26/06/2013, but abandoned it and filed the application dated 11/06/2014 seeking stay of attachments pending hearing and determination of the application dated 26/06/2013. The application dated 11/06/2014 was heard and dismissed by the court on 19/09/2014, while the application dated 26/06/2013 has never been set down for hearing by the Plaintiff. He concluded that the Plaintiff had lost interest in the suit since she has not taken steps in the matter since 19/09/2014. The 1<sup>st</sup> Defendant contended that the Plaintiff's inordinate delay in prosecuting the case has prejudiced it as it continues to incur legal fees and costs as a result of the pending suit. He beseeched the court to reign in on the Plaintiff who has slept on her rights and is thus guilty of laches.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants supported the 1<sup>st</sup> Defendant's application.

The 4<sup>th</sup> Defendant did not participate in the hearing of the application.

The court has considered the application, the record as well as the applicable law. After the Plaintiff's application dated 11/06/2014 was dismissed by the court on 19/09/2014, the Plaintiff appears to have lost interest in the suit. The record shows that she was absent on numerous occasions when this matter came up in court despite there being evidence that she had been served. The court is satisfied that the Plaintiff was served with the application seeking to dismiss her suit but she did not file any response to explain her inaction. In the circumstances, this court can only infer that the Plaintiff has lost interest in the suit.

Order 17 Rule (2) of the Civil Procedure Rules gives the court discretion to dismiss an inactive suit on an application by a party. The Plaintiff's suit is dismissed.

The 1<sup>st</sup> Defendant's application dated 20/12/2018 is allowed with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

This is an old suit filed seven years ago. The 1<sup>st</sup> Defendant is directed to set down its counterclaim for hearing and determination within the next six months.

Dated and delivered at Nairobi this 4<sup>th</sup> day of November 2019

**K.BOR**

**JUDGE**

**In the presence of: -**

J. Oketch holding brief for B. Otieno for the 1<sup>st</sup> Defendant

Ms. L. Ngaira holding brief for G. Kithi for the 2<sup>nd</sup> Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff and the 3<sup>rd</sup> and 4<sup>th</sup> Defendants