



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 169 OF 2018

DR. SELINA VUKINU AMBE.....PLAINTIFF/RESPONDENT

VERSUS

ISAAC ODHIAMBO OOKO.....DEFENDANT/APPLICANT

RULING

1. The application dated 28th September, 2020 seeks order that this suit be dismissed for want of prosecution.
2. It is stated in the affidavit in support of the application that this suit was instituted about two years ago. That the last time the suit was listed for hearing was on 30th September, 2020. It is added that it is apparent that the Plaintiff has lost interest in the suit.
3. The application is opposed. It is stated in the replying affidavit that the Plaintiff has complied with the pre-trial directions and the case has been certified ready to proceed. That no hearings have been taking place since the outbreak of the COVID 19 Pandemic.
4. The Applicant filed a supplementary affidavit and averred that the COVID 19 Pandemic is not an excuse for the failure to prosecute this case as there are adequate measures taken by the court to reschedule hearing dates.
5. The Respondent filed a rejoinder and stated that their side has followed the directions given by the court following the outbreak of the COVID 19 Pandemic.
6. I have considered the application, the response and the submissions filed by the respective counsel for the parties.
7. Order 17 rule 2 (3) provides as follows:

“2. (1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.

(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit

(3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.”

8. This court takes judicial notice of the outbreak of the COVID 19 Pandemic and the unprecedented challenges it has visited on the administration of justice. This court is also aware of the directions that have been issued by the judiciary regarding the administration of justice during the pandemic. This court is also aware of the directions issued specifically by the Presiding Judge of the Civil Division from time to time on the fixing of hearing dates in respect of witnesses and physical hearings. The instant case has no directions for hearing during the pandemic.
9. In addition to the above, this case was last in court on 30th September, 2019 and on 18th October, 2019 was given a date in the registry for hearing on 15th April, 2020. The case was not listed for hearing on 15th April 2020 as by then the courts had been temporarily closed following the outbreak of the COVID 19 Pandemic. This case was therefore not ripe for dismissal as at the time of the filing of the application at hand on 30th September, 2020.

10. With the foregoing, the application is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF JUNE, 2021

B.THURANIRA JADEN

JUDGE