



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CIVIL CASE NO. 5 OF 2019

ELIZABETH AMBALE AMISI.....PLAINTIFF

VERSUS

SIAYA COUNTY REFERRAL HOSPITAL.....1ST DEFENDANT

DR. ALLAN.....2ND DEFENDANT

RULING

1. This suit was slated for hearing today having been certified as ready for trial on 12/7/2021. The hearing was to proceed on 6/10/2021 but the court got engaged in a three Judge Bench.
2. The hearing was fixed for today on 12/10/2021 by consent. Today, the Plaintiff is absent. Only her counsel is in court. The advocate has filed an application for stay of this suit generally to enable the Plaintiff refer the Complaint to the Kenya Medical Practitioner's Council to determine the question of liability so that they can return to court to determine quantum.
3. The defendants are represented in court and are ready to proceed with the hearing. They have one witness.
4. I have considered the application by the Plaintiff's counsel. I note that this is a very old matter of 2019 which was initiated out of time with leave of court.
5. The Plaintiff has generally not been keen on prosecuting this suit and it is the court which has been pushing for the prosecution of the suit and the court record shows that.
6. Nothing prevented the Plaintiff from referring her case before the Medical practitioners and Dentists Board, the pendency of this suit notwithstanding, or even before she filed this suit. There is obvious inordinate delay by the Plaintiff in prosecuting this suit. She has never attempted to prosecute it and failed.
7. This court abhors being used to archive pleadings for backlog to be created. Nonetheless, the Plaintiff was allegedly injured as a result of a surgery by the defendants. Despite the delay, she deserves justice.
8. This court therefore exercises discretion to allow the application for stay of proceedings in this case to allow the Plaintiff pursue the alternative remedy at the Medical Practitioners and Dentists Board.
9. These proceedings are stayed for a period of Forty Five (45) days only. Mention to report on the progress of the matter to be referred for an alternative remedy on 20/12/2021.
10. Today's costs to the defendants.
11. The Plaintiff shall also pay court adjournment fees of Kshs. 3,500/= and witness expenses of Kshs, 1,500/= to the defence witness who is in court.
12. The application dated 8/10/2021 is therefore allowed and spent.
13. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 3RD DAY OF NOVEMBER, 2021

R.E. ABURILI

JUDGE