

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

DIVORCE CAUSE NO. 9 OF 2012

JMA.....PETITIONER

VERSUS

SOS.....RESPONDENT

RULING

1. This cause was dismissed on 6th October 2016 for want of prosecution. It had been filed on 7th June 2012, and no step had been taken to have it prosecuted. The only time there was ever any activity relating to it was on 6th October 2016, when it was placed before Mwita J., and he dismissed it. After that no action was taken in the matter until 30th July 2019 when the summons that I am now called upon to determine, of even date, was filed.

2. In that application the petitioner is asking me to reinstate his cause, and to have it transferred to the Vihiga Principal Magistrate's Court for disposal. The reason he gives for not prosecuting the matter is that he was attached to a Judge as a driver and that made it difficult for him to prosecute the suit.

3. I am not persuaded that there exist good reasons for the non-prosecution of the suit. If the petitioner were seriously interested in the prosecution of the matter he would have found time to come to Kakamega for that purpose. The cause was filed through an advocate, which meant that it was not up to the petitioner in person to fix dates and to pursue the matter. No dates were ever fixed, whether for directions or hearing, and there was no occasion when the matter failed to proceed on account of the petitioner being unable to find time to travel to Kakamega for the hearing. He filed the suit and went to sleep. What he gives as an explanation is more of an excuse than a reason. Being attached to a Judge does not shield a party from its obligations under the law of procedure. People take leave or obtain off-duty permission to allow them to attend to such matters as suits that they might have filed.

4. Suits are not filed in court for the purpose of being parked at the registry until such time that the parties find it convenient to come and dispose of them. Suits ought to be disposed of at the earliest possible time. Indeed, failure to move the court, for a hearing, within a period of one year is adequate for the court to conclude that a party is not interested in the matter, and that it had filed the same in abuse of court process, for nuisance sake, to vex the other party.

5. I am not persuaded that I should exercise discretion to reinstate the suit. Nothing prevents the petitioner from filing a fresh divorce petition at the Vihiga Principal Magistrate's Court. I find no merit in the application dated 30th July 2019, and I hereby dismiss the same. As the respondent did not reply to the application, I shall not award costs.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT KAKAMEGA THIS 14th DAY OF February, 2020

W. MUSYOKA

JUDGE