



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 337 OF 2014

HELLEN W. KIBERENGE.....PLAINTIFF

VERSUS

DR. RACHAEL N. KANGE'THE.....1ST DEFENDANT

KAREN HOSPITAL NAIROBI.....2ND DEFENDANT

RULING

The matter herein was listed for Notice to Show Cause why the suit should not be dismissed for want of prosecution, on the 6th day of March 2019. On the said date both Counsels for the respective parties informed the court that they had filed affidavits in response to the said notice.

In her affidavit sworn on 5th October, 2018, the Plaintiff depones that she has not lost interest in prosecuting the suit. She states that there was a lapse of communication between her and the Advocate on record which led to the delay in prosecuting the suit but she has since properly instructed her Advocates to take the necessary steps to set the suit down for hearing.

On her part the 1st Defendant has sworn an affidavit supporting the dismissal of the suit. She avers that the last action in the matter was taken on 22nd January 2015 when his Advocate was served with a reply to defence. She contends that the Plaintiff's affidavit is full of generalities and does not offer any credible reasons why she has not prosecuted her case since February 2015. That she has not said why the communication between her and her advocate lapsed and therefore the delay in prosecution of the suit is inexcusable and can only be attributed to indolence. She has urged the court to dismiss the suit.

The court has considered the contents of the two affidavits referred to hereinabove. I have also perused the record of the proceedings. The reason given by the Plaintiff for non-prosecution of the suit is a lapse of communication between her and her advocate which has now been sorted out.

As rightly stated by counsel for the defence, the last action taken in this matter before it was first listed for Notice to Show Cause was on 27th January 2015 when parties recorded a consent granting the Plaintiff leave to file a reply to the defence, within seven (7) days from the date of that consent.

The matter was first listed for Notice to Show Cause on the 29th June 2018 which was a period of more than three (3) years since it was last in court which period is unreasonable for a party who can be said to be willing to prosecute her case. However, the court has noted the reason given for non-prosecution of the suit and the fact that the Plaintiff is now ready to prosecute the suit.

The Defendants have not shown any prejudice that they shall suffer if the suit is not dismissed. Indeed, none has been alluded to in the affidavit filed in court.

In the premises, it is only fair that the Plaintiff be given a chance to prosecute the suit and since its an old matter the court do hereby order that the same be prosecuted within 120 days failing which, it shall stand dismissed.

It is so ordered.

Dated, signed and delivered at Nairobi this 11th day of March, 2019.

.....

L. NJUGUNA

JUDGE

In the presence of:-

..... *for the Plaintiff*

..... *for the Defendants*