



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 308 OF 2004

DAVID HOPCRAFT.....1ST PLAINTIFF

PHILIP JOHN TILLEY.....2ND PLAINTIFF

JOSEPH MATHEKA MICHAEL.....3RD PLAINTIFF

ALBERT MUTIO MUTEI.....4TH PLAINTIFF

NAHASON OGUTU.....5TH PLAINTIFF

SIMON ELAL.....6TH PLAINTIFF

DAVID ADAN.....7TH PLAINTIFF

-VERSUS-

THE ATTORNEY GENERAL.....1ST DEFENDANT

THE KENYA WILDLIFE SERVICE....2ND DEFENDANT

RULING

1. The Notice to Show Cause was issued pursuant to Order 17, Rule 2 of the Civil Procedure Rules on 22nd January, 2019 requiring the parties to show cause as to why the suit should not be dismissed for want of prosecution.

2. The plaintiffs filed an affidavit in reply thereto through their advocate, *Mohamed Zahir-Ud-Din Ahmad Malik*, largely asserting that the advocate acting for the 2nd defendant passed away on 22nd December, 2017 and that the deponent had been appointed by the Law Society of Kenya to wind up the deceased advocate's practice. The deponent added that his firm is anticipating the appointment of another advocate to act for the 2nd defendant in the matter.

3. I have taken into consideration the averments made in the reply. The record shows that the suit was last in court on 14th June, 2017 at which point an adjournment was sought by the 1st defendant's counsel. The court granted the said adjournment and ordered that the matter be heard on 20th November, 2017.

4. It would appear that there is no indication from the court record as to what transpired on 20th November, 2017. Suffice it to say, the plaintiffs have offered the reason that the matter could not proceed due to the untimely demise of the 2nd defendant's advocate. My humble view on the same is that whereas such was an unfortunate turn of events, it does not explain why the plaintiffs did not prosecute their case. In fact, the demise of the aforementioned advocate had no direct impact on the plaintiffs and in any event, this information was not brought to the attention of this court until now.

5. I have also noted that no documentation has been availed to me evidencing the averment that the plaintiff's advocate has been appointed to wind up the legal practice of the 2nd defendant's advocate.

6. Similarly, I have looked at the letter dated 12th November, 2018 and annexed to the replying affidavit; the same was addressed to the 2nd

defendant by the plaintiffs' advocate and bore the information regarding the passing on of the advocate in addition to offering a suggestion for an amicable settlement in the matter. However, the letter is neither dated nor does it bear the official letter-head of the plaintiffs' advocate. Once again, the intention of having the matter settled out of court was never conveyed to the court. It is therefore clear that this court is in the dark as to what has been transpiring behind the scenes in the matter since it was last prosecuted.

7. It is my view that the plaintiffs have given no sufficient reason as to why their suit has not been prosecuted for close to one and a half years. No efforts were made to fix the matter for whatever reason and it is well noted that this is quite an old matter.

8. In the premises, I am not satisfied by the explanation given and move to dismiss the suit with costs to the defendants.

Dated, signed and delivered at NAIROBI this 3rd day of April, 2019

L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiffs

..... for the 1st Defendant

..... for the 2nd Defendant