



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 675 OF 2009**

**MICHAEL GITAU WAWERU.....PLAINTIFF**

**-VERSUS-**

**PAMELA SAVAGE.....1<sup>ST</sup> DEFENDANT**

**ESMOND BRADLEY MARTIN.....2<sup>ND</sup> DEFENDANT**

**PAUL WELD DIXON.....3<sup>RD</sup> DEFENDANT**

**MIKE MILLS.....4<sup>TH</sup> DEFENDANT**

**IAN LANE.....5<sup>TH</sup> DEFENDANT**

**THE KAREN LANGATA DISTRICT ASSOCIATION....6<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is premised on a notice to show cause issued against the parties on 26<sup>th</sup> February, 2019 requiring them to show cause as to why the suit should not be dismissed for want of prosecution. The suit was last in court on 19<sup>th</sup> September, 2017.
2. *Mr. James K. Muthui* advocate for the plaintiff swore a replying affidavit averring inter alia that the matter, being part heard, was fixed for further hearing on 24<sup>th</sup> May, 2017 but that on the said date, this court was not sitting. That subsequently, the 6<sup>th</sup> defendant’s advocate on record filed an application seeking to strike out the plaintiff’s suit against the 6<sup>th</sup> defendant while the firm of advocates representing the 1<sup>st</sup> to 5<sup>th</sup> defendants withdrew from acting and the said defendants have since not appointed another firm of advocates.
3. That when the matter came up in court on 19<sup>th</sup> September, 2017, this court directed that the 6<sup>th</sup> defendant’s application be heard on 21<sup>st</sup> September, 2017 but on the said date, the matter did not proceed since the 6<sup>th</sup> defendant had not served the remaining defendants with a copy of his application.
4. *Prof. Albert Mumma* counsel for the 6<sup>th</sup> defendant in his reply essentially deponed that the plaintiff has not been diligent in prosecuting his case and the same ought to be dismissed.
5. I have considered the averments by the respective parties. Turning to the record, I am able to confirm that the erstwhile advocates for the 1<sup>st</sup> to 5<sup>th</sup> defendants filed an application to withdraw from acting in the matter and the application was allowed on 11<sup>th</sup> April, 2017. Since then, the said defendants have not participated in the suit and there is also nothing to indicate that they have appointed a different firm of advocates.
6. Needless to say, the record reveals that when the parties appeared before me on 19<sup>th</sup> September, 2017, I directed that the 6<sup>th</sup> defendant’s application dated 4<sup>th</sup> July, 2017 seeking to have the 6<sup>th</sup> defendant struck out of the suit be heard on 21<sup>st</sup> September, 2017. There is no indication of what transpired on the said date as per the record.
7. As it stands, the 6<sup>th</sup> defendant’s application has not been heard and/or determined. Furthermore, it would appear neither of the parties attempted to obtain a further date for the hearing of the said application. While the plaintiff is responsible for ensuring the expeditious prosecution of his case given that it is an old matter, the onus was equally on the 6<sup>th</sup> defendant to proactively pursue the hearing and determination of its application.

8. In the premises, I will allow the plaintiff the opportunity of prosecuting his case since the same is part heard. Consequently, I make the following orders:

a) The parties shall obtain a date for the hearing of the 6<sup>th</sup> defendant's application dated 4<sup>th</sup> July, 2017 on priority basis and in any event, within 21 days from today.

b) The plaintiff shall ensure prosecution of his suit within 120 days from the date on which the aforesaid application is determined, failing which the same shall stand dismissed.

Dated, signed and delivered at **NAIROBI** this 4<sup>th</sup> day of April, 2019

**L. NJUGUNA**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the 1<sup>st</sup> to 5<sup>th</sup> Defendants

..... for the 6<sup>th</sup> Defendant