



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 493 OF 2013**  
**ELIZABETH ANNE BUKUSI .....PLAINTIFF**  
**-VERSUS-**  
**LUBANO KIZITO.....DEFENDANT**

**RULING**

This matter was on the 11<sup>th</sup> day of March, 2019 listed for notice to show cause why it should not be dismissed for want of prosecution. On the said date, counsels for the respective parties sought leave of the court to file their affidavits in response to the said notice and it was put off to the 1<sup>st</sup> day of July by which date, parties had done the needful.

The court has considered the affidavits as filed. In his affidavit, counsel for the plaintiff has averred that since the matter was certified ready for hearing on the 4<sup>th</sup> day of December, 2017, his clerk had difficulties in tracing the court file which, according to him, was occasioned by the renovations to the civil registry which were ongoing then.

He has annexed a copy of the letter dated the 15<sup>th</sup> day of November, 2018 to the Deputy Registrar in which, he sought her assistance in tracing the court file to enable him set down the matter for hearing.

He averred that before he could receive a response from the Deputy Registrar the matter was listed for notice to show cause. He stated that the notice was issued without taking into account his letter to the Deputy Registrar seeking assistance in trying to locate the file. He contends that the plaintiff is ready, vigilant and willing to prosecute the matter to its logical conclusion. He further states that if the matter is dismissed, his client will suffer a lot of prejudice.

On the part of the defendant, he has supported the dismissal and has filed a replying affidavit sworn by Haggai Okeyo Advocate, who is on record for him. He avers that contrary to what the plaintiff contends, he never attempted to set down the matter for hearing after it was certified ready for hearing. He stated that the plaintiff has not provided proof of trying to set down the suit for hearing.

He averred that at no time was the registry closed for renovations but that the normal operations in the registry were going on. He stated that the letter to the Deputy Registrar was done almost a year after the matter was certified as ready for hearing and the same was done after the plaintiff realized that the matter would be dismissed for want of prosecution.

He concluded by stating that the plaintiff has never been ready and willing to prosecute the matter and has offered no credible explanation for the delay in prosecuting the same. That the lax manner of handling the suit by the plaintiff negates the overriding objective of expeditious resolution of dispute as provided

for under Order 1A of the Civil Procedure Rules.

The court has considered the contents of the respective affidavits and in particular the reason given by the plaintiff for her failure to prosecute the matter. The court has also perused the record of the court and I note that the matter has been fairly active but the parties were pre-occupied in pre-trials until the 4<sup>th</sup> day of December, 2017 when it was certified ready for hearing.

No action was taken in the matter from that date as a consequence of which the matter was listed for notice to show cause.

The court has noted the sentiments by the counsel for the defendant in regard to the delay in prosecuting the matter. In my view the delay and especially between the last time it was in court and the notice to show cause, has been explained. The letter to the Deputy Registrar was done on 15<sup>th</sup> November, 2018 which was before it was so listed.

In the interest of justice, the court will spare the suit and in view of the age of the matter, order that the same be prosecuted within six months from the date hereof, failing which, it shall stand dismissed.

Dated, signed and delivered at **NAIROBI** this **18<sup>TH</sup>** day of **JULY, 2019**.

.....

**L. NJUGUNA**

**JUDGE**

In the presence of:

..... Plaintiff

..... Defendant