

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 391 OF 2008

STEPHEN MWICIGI MUIRURI.....PLAINTIFF

-VERSUS-

THE ATTORNEY GENERAL.....DEFENDANT

RULING

The matter herein was filed in the year 2008 and due to the slow pace at which it is being prosecuted, the court on its own motion issued the parties with a notice to show cause why the same should not be dismissed for want of prosecution.

When the same was listed for hearing of the notice to show cause on the 29th day of March, 2019 counsel for the plaintiff sought the leave of the court to file an affidavit in response to the same.

The court has considered the contents of the Replying affidavit and has noted that the reasons given for non prosecution of the suit is non availability of the court file at the registry. The plaintiff avers that he made efforts to follow up with the registry and has annexed a letter dated 25th day of April 2018 to the Deputy Registrar wherein he sought the Deputy Registrar's intervention in tracing the file.

The court has noted that the letter referred to is not stamped with the registry stamp and it is highly probable that the same might not have been delivered to the Registrar. The record further shows that before it was first listed for dismissal, it was last in court on 18th September, 2017 before Hon. Justice Mwangi when there was no appearance by both parties and the judge order that parties may move the court within 30 days of that date. This was not done. The plaintiff did not take any action until the matter was listed for notice to show cause.

Upon perusal of the court record, it is also noted that the plaintiff has complied with Order II of the Civil Procedure Rules but the defendant has not yet done so. This is notwithstanding the fact that the defendant has had ample time within which so to do. Litigation must come to end. Though the court is not fully satisfied that the plaintiff has taken serious steps to prosecute the matter, in the interest of justice, I will spare the suit from dismissal and order that the same be prosecuted within 6 six months from the date hereof failing which, it shall stand dismissed.

Dated, signed and delivered at **NAIROBI** this **11TH** day of **JULY**, 2019.

.....

L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff/Respondent

..... for the Defendant/Applicant