



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 312 OF 2007

IAN MICHAEL NDIRANGU.....PLAINTIFF

-VERSUS-

AGNES W. MWANGI.....DEFENDANT

RULING

1. This ruling was precipitated by the notice to show cause issued by this court on 22nd January, 2019 requiring that the parties show cause as to why the suit should be spared from dismissal for want of prosecution.
2. The plaintiff swore an affidavit in reply to the notice to show cause on 4th February, 2019 explaining that the delay in prosecuting the suit was occasioned by the fact that he has been out of Nairobi for prolonged periods of time undergoing training with the Kenya Defence Forces (KDF) and that when the matter came up in court last sometime in 2016 he was away in Somalia on official duties and that the matter was stood over generally to enable the parties explore an out-of-court settlement which later fell through.
3. The plaintiff also urged this court to consider the pecuniary nature of the suit and direct that the same be transferred to the subordinate courts for its expeditious disposal.
4. In response to the plaintiff's affidavit, *Wanjiru Christine* advocate for the defendant swore a replying affidavit asserting that the same is *inter alia*, frivolous and unmeritorious, further stating that this is the second time a notice to show cause was issued in the matter and that the plaintiff has not only failed to disclose the period during which he was away on official duties but has not offered an explanation for why he did not prosecute his suit in 2017 upon returning from Somalia. The deponent urged this court to dismiss the suit.
5. Also on record is the affidavit sworn by the plaintiff's advocate on 21st July, 2019, *Jackline M. Maingi*, essentially reiterating that her client is still keen on prosecuting the suit.
6. I have considered the respective affidavits on record. I note that a notice to show cause was recently issued on 11th March, 2019 during the pendency of the earlier notice issued on 22nd January, 2019. For the avoidance of doubt, this ruling relates to the notice of 22nd January, 2019 and resultantly, the notice to show cause of 11th March, 2019 is hereby lifted.
7. Going by the record, the suit was last actively in court on 11th May, 2016 when the parties through their respective advocates confirmed that their attempts at reaching a settlement had borne no fruit. Consequently, the court directed that they obtain hearing dates from the registry.
8. I have looked at the copies of the plaintiff's passport annexed to his affidavit indicating his travels out of the country on various dates; however, according to the stamps borne on the annexed copies, it would appear the last trip made by the plaintiff was on 12th December, 2016 though it is not indicated how long he was away for. That notwithstanding, no explanation has been given for the inaction in the matter since then.
9. I have also perused the record and noted that the defendant has not complied with pre-trial directions despite the directions given by the court on 25th January, 2016. This goes to show that whereas there is evidence of a prolonged delay in the prosecution of the case, it is clear that the defendant has contributed to such delay through her non-compliance.
10. In the interest of justice and in consideration of the explanation given by the plaintiff coupled with contributory delay by the defendant, I will give the plaintiff the benefit of the doubt, though it is well noted that this is quite an old matter.
11. Further to the above, I have perused the plaint and established that the prayers being sought fall well within the pecuniary jurisdiction of the subordinate courts.

12. Consequently, the plaintiff is granted a last opportunity to prosecute his case. I also make an order that the court file be transferred to the Chief Magistrate's Court at Milimani Commercial Courts for assignment to any subordinate court with pecuniary jurisdiction to handle the matter.

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

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L. NJUGUNA

JUDGE

In the presence of:

..... **for the Plaintiff**

..... **for the Defendant**