



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 12 OF 2018

ST MARY'S MISSION HOSPITAL HIGH SCHOOL

THROUGH THE BOARD.....APPLICANT

-VERSUS-

ST MARY'S MISSION HOSPITAL LIMITED.....1ST DEFENDANT

ASSUMPTION SISTERS OF NAIROBI

REGISTERED TRUSTEES.....2ND DEFENDANT

RULING

- 1) Pursuant to the provisions of Order 17 rules 1, 2 and 3 of the Civil Procedure Rules, the defendants took out the motion dated 2/8/2019 whereof they sought for this suit to be dismissed for want of prosecution with costs. The motion is supported by the affidavit sworn by Wanja G. Wambugu. The motion was served upon the plaintiff through the firm of Mwangi E. G. & Co. Advocates.
- 2) The plaintiffs did file any response to the motion hence this court permitted the defendants' advocate to prosecute the motion exparte. The plaintiff and its advocate did not also attend court.
- 3) I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit. It is stated by the defendants that the plaint was filed on 12th January 2018 and that the plaintiff has not taken any steps to have the matter set down for hearing. The deponent of the supporting affidavit averred that the suit was last in court for hearing on 17th May 2018 and no steps have been taken to have it ready for hearing. On the basis of the above reason, this court was urged to dismiss the action for want of prosecution.
- 4) The record shows that this suit was filed on 12th January 2018 contemporaneously with the motion dated 11th January 2018 in which the plaintiff sought for inter alia an order of mandatory injunction to compel the defendants to reopen the school known as St. Mary's Mission Hospital High School, Lang'ata pending the hearing and determination of this suit.
- 5) The plaintiff also applied for an order of injunction to restrain the defendants from closing, chasing away the teachers and students or from interfering with the smooth and quiet learning in St. Mary's Mission Hospital High School, Lang'ata pending the hearing and determination of this suit.
- 6) While the application is pending hearing, the defendants filed a Notice of Preliminary Objection dated 24.1.2018 in which they sought to have the suit struck out for being resjudicata. It was pointed out that there was a pending Nakuru ELC no. 224 of 2010. The preliminary objection was heard and dismissed by Lady Justice Githua in a ruling she delivered on 17th May 2018.
- 7) It would appear since then nothing in the file happened until 6/8/2019 when the motion dated 2/8/2019 was filed. The motion dated 11.1.2018 has never been fixed for interpartes hearing.
- 8) It is clear that this suit was last in court on 17.5.2018 for the delivery of the ruling on the notice of preliminary objection dated 24.1.2018.
- 9) A period of one year six months has lapsed and no step has been taken to have this suit fixed for hearing. There is no explanation which has been given to justify the delay. This is a case therefore which is fit for dismissal.
- 10) In the end, I find the defendants' motion dated 2/8/2019 to be meritorious hence it is allowed as prayed. Consequently, this suit is dismissed for want of prosecution with costs to the defendants.

Dated, signed and delivered at Nairobi this 1st day of November, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent