

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 176 OF 2013

KENYA FORESTRY RESEARCH INSTITUTE..... PLAINTIFF

VERSUS

BONIFACE PETER NDEGWA..... 1ST DEFENDANT

JACKSON MUGWE NDEGWA..... 2ND DEFENDANT

RULING

1. By virtue of a Notice to Show Cause dated 1st March, 2018 issued under the provisions of Order 17 Rule 2 of the Civil Procedure Rules, this court listed the suit herein for dismissal for want of prosecution on 13th April, 2018. On the said date the Plaintiff filed two Affidavits in Response to the Notice one sworn by **KEVIN WAKWAYA** and the other by **OTIENO CHANGE**.

2. In the Affidavit of Kevin Wakwaya, who is the Plaintiff's Advocate practicing in the firm of Rachier & Amollo Advocates, it was deponed that the Advocate who was handling the file, one Otieno Change left employment of the firm of Rachier Amollo in the year 2015 and while updating his status, he erroneously marked the suit as having been concluded and the file was transferred to the "closed files" section. Annexed is an Affidavit of Otieno Change confirming the same. It was further deponed that the Plaintiff's Officer who was handling the matter one Shem Ongao left the employment of the Plaintiff in an acrimonious manner. The Plaintiff avers, the failure to prosecute the suit was as a result of internal miscommunication and the issues involved in the suit are matters of public interest touching on misuse of public resources and therefore pleads for the suit not to be dismissed. Annexed to the Affidavit is a letter from the Plaintiff expressing the Plaintiff's interest in prosecuting the suit.

3. The Defendants did not file a Reply to the Notice.

4. I have considered the Affidavits and the grounds advanced by the Plaintiff. Order 17 Rule 2 empowers this Court to dismiss a suit in which no action has been taken for a period of 12 months. However, if the parties show cause to the satisfaction of this court as to why the same has not been prosecuted, the court can exercise its discretion in favour of the plaintiff. From the explanation given, it is clear that failure to prosecute the suit was not deliberate. In the circumstances of this case, it is possible that there was a breakdown of communication and the Plaintiff may not have been aware of the status of the file.

5. That being the case, this court will exercise its discretion in favour of the Plaintiff and give them a chance to prosecute the suit. This suit was filed in the year 2013 and it will be prudent that the same be prosecuted promptly in the interest of justice and in which case I direct that the same be prosecuted within 120 days from the date of this ruling failing which, it shall stand dismissed.

Dated, Signed and Delivered at Nairobi this 3rd Day of May, 2018.

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L. NJUGUNA

JUDGE

In the Presence of

.....For the Applicant

..... For the Respondent