

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 63 OF 2011

REAL INSURANCE COMPANY LIMITED....PLAINTIFF/APPLICANT

VERSUS

NGUMBI MUNYASYA.....DEFENDANT/RESPONDENT

RULING

1. On 3rd March, 2017, this Court served the Parties' Advocates with a Notice to show cause why the suit should not be dismissed for want of prosecution. The Notice was heard on 10th March, 2017 whereupon the Plaintiff/Applicant explained the delay and the Court ordered that the matter be prosecuted within 90 days from the date thereof. The Applicant was not able to comply with the aforesaid orders and when the matter came up before this Court on 23rd October, 2017, the Court directed that a formal application be made as the suit stood dismissed when the 90 days lapsed. The Plaintiff therefore filed the instant Notice of Motion dated 13th December, 2017 under the provisions of Order 51 Rules 1, 3 and 4, Order 12 Rule 7 and Order 17 Rule 2 of the Civil Procedure Rules (2010) and Sections 3A and 63E of the Civil Procedure Act seeking orders;

- (a) THAT this Honourable Court be pleased to set aside the order made on 10th March, 2017 dismissing this suit, and all other consequential orders thereto.
- (b) THAT the Honourable Court be pleased to reinstate this suit to hearing and determination on merit.
- (c) THAT costs of this application be provided for.

2. The application is supported by the Affidavit of the Applicant's Counsel, **JENIPHER CATHERINE OMBONYA** sworn on 13th December 2017. She depones that after the court issued directions on 10th March, 2017 she requested for a hearing date and the matter was fixed for hearing on 30th May, 2017 on which date the case was listed as one of the matters taken out as the judges were attending urgent electoral disputes. She therefore fixed a mention date for 14th June, 2017 but again the case was taken out of the list. On the same date 14th June, 2017, the Applicant's Advocates fixed the case for hearing on 26th June, 2017 but the matter was again taken out of the cause list. She depones that on 28th July, 2017 she wrote to the Deputy Registrar requesting for another date and was given the 23rd October, 2017 on which date the court directed the Applicant to make a formal application. She therefore prays that the application be allowed as they did their best to fix the matter for hearing within the 90 days but the delay was out of their control.

3. The Defendant/Respondent did not file a response to the application.

4. From the Supporting Affidavit, is it evident that the Applicant did their best to set down the matter for hearing only that the case was being taken out on all the dates fixed. The applicant, in my view has satisfactorily explained why the matter could not be prosecuted within the 90 days as ordered by this court. Despite having been served with the application, the Respondent did not file a response and I find that the Defendant will not suffer any prejudice if the orders are granted.

5. Notwithstanding the foregoing, there is also the need to expedite this matter and have the same prosecuted expeditiously. I order that the suit be prosecuted within the next 120 days from the date of this ruling failure to which it shall stand dismissed. The orders made on 10th March, 2017 dismissing this suit are therefore set aside and the suit is reinstated.

6. Costs of the application shall be in the cause.

Dated, Signed and Delivered at Nairobi this 10th Day of May, 2018.

.....

L. NJUGUNA

JUDGE

In the Presence of

.....*For the Applicant*

..... *For the Respondent*