



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**HIGH COURT CIVIL CASE NO. 1130 OF 2006**

**LAWRENCE N. MWANGI T/A LAWRENCE**

**MWANGI & CO. ADVOCATES.....PLAINTIFF**

**VERSUS**

**THE STANDARD LIMITED.....1<sup>ST</sup> DEFENDANT**

**KWENDO OPANGA.....2<sup>ND</sup> DEFENDANT**

**RULING**

This suit was filed on 27<sup>th</sup> October, 2006. Upon service of summons to enter appearance, the defendant's entered appearance on 2<sup>nd</sup> November, 2006 and filed a defence on 13<sup>th</sup> November, 2006. The plaintiff filed a reply to the defence on 21<sup>st</sup> November, 2006. Since then this suit has never been listed for substantive hearing.

There is now before me an application by way of Notice of Motion dated 15<sup>th</sup> June, 2017 under Section 1A, 1B and 3A of the Civil Procedure Act Cap 21 and Order 17 Rule 2, 3 of the Civil Procedure Rules seeking the striking out of the plaintiff's suit for want of prosecution. The defendants have set out the ground upon which the said order is sought alongside a supporting affidavit sworn by Kevin Wakwaya the Advocate for the defendants.

From the record, this is not the first application seeking the same orders. There is an application dated 16<sup>th</sup> January, 2006 which was followed by a preliminary objection raised by the plaintiff in that, the application and supporting affidavit pre dated the filing of the suit and therefore it was incompetent and incurably defective. That preliminary objection was rejected. The defendant then filed yet another application dated 16<sup>th</sup> January, 2007 which application was subsequently withdrawn.

The defendants had filed a similar application on 17<sup>th</sup> May, 2011 which however was dismissed and the plaintiff allowed prosecuting his suit. The plaintiff did not comply and so the defendants filed yet another application dated 14<sup>th</sup> June, 2014 seeking the same orders.

When the application was canvassed before Onyancha J, the court dismissed the application in consultation with the advocates, who included the plaintiff herein and once again gave the plaintiff an opportunity with an order **"to bring suit to a speedy hearing with liberty to defendants to apply."** That order was made on 29<sup>th</sup> September, 2014. Once again the plaintiff did not act until this application was filed.

The plaintiff filed a replying affidavit repeating what he told Onyancha J about his absence from the country, but did not give any reasons as to why from 2014 he has not moved the court to have his case heard except the blanket allegation that he could not get hearing dates. There are no letters addressed to the advocates for the defendants inviting them to take hearing dates or to the Deputy Registrar to complain of non-availability of hearing dates.

The application was listed for hearing on 24<sup>th</sup> May, 2018 and a hearing notice served upon the plaintiff's advocates who acknowledged receipt on 26<sup>th</sup> April, 2018. However, on the hearing date, the plaintiff's counsel did not appear and therefore the court only heard counsel for defendants who relied on the affidavit in support of the application.

Order 17 Rule 2 (3) allows the defendant's to file this application. The record clearly shows that the plaintiff has either lost interest in the prosecution of his suit or does not care about the outcome. It is the defendants who have consistently alerted the plaintiff of the delay in the prosecution of this matter.

In the circumstances the only order that commends itself is the striking off of the plaintiff's suit, which I hereby do, with costs to the defendants.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 12<sup>th</sup> Day of June, 2018.***

**A. MBOGHOLI MSAGHA**

JUDGE