

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 178 OF 2015

HON. MARY WAMBUI MUNENE.....PLAINTIFF/RESPONDENT

VERSUS

WILFRED NYAGA.....1ST DEFENDANT/APPLICANT

MOSES MICHIRA.....2ND DEFENDANT/ APPLICANT

THE STANDARD GROUP LIMITED...3RD DEFENDANT/ APPLICANT

RULING

1. The Application dated 23rd March, 2018 seeks orders that the suit herein be dismissed for want of prosecution.
2. It is stated in the grounds and the affidavit in support of the application that it's been more than one year without the Respondent having taken any steps to prosecute this case. That the delay herein is inordinate and inexcusable and connotes that the Plaintiff has lost interest in the matter. That the delay is prejudicial to the Applicant as memories fade and witnesses may no longer be available.
3. The application is opposed. It is stated in the replying affidavit that the application is premature as the case has been active with the last mention having been on 14th April, 2018.
4. During the hearing of the appeal, the counsels relied on the affidavits filed. I have considered the said affidavits. I have also perused the court file. It is noted that the Respondent's side has visited the registry and fixed mention dates twice in the year 2016 and once in the year 2017. The case was again fixed for mention on 13th February, 2018. On 13th February, 2018 the Respondent's counsel appeared before the Deputy Registrar for the pre-trial directions. The case has therefore not been dormant. It seems the Applicant's side did not acquaint themselves with the record before filing the application at hand.
5. The upshot is that the application is dismissed with costs.

Date, signed and delivered at Nairobi this 19th day of July, 2018

B. THURANIRA JADEN

JUDGE