

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 209 OF 2011

SIMON NJOROGE NGOTHOPLAINTIFF

VERSUS

MASARI DISTRIBUTORS LIMITEDDEFENDANT

RULING

The plaintiff filed a suit against the defendant following injuries sustained as a result of him alighting from a motor vehicle owned by the defendant. He blamed his injuries on the driver of the defendant. His claim was denied by the defendant.

On 14th June, 2016 the suit was dismissed for want of prosecution under Order 17 Rule 2 (1) of the Civil Procedure Rules. The record shows that the last time the suit was in court was 16th December, 2015 when both counsel for the plaintiff and the defendant appeared before Njuguna J. When the case was adjourned because the plaintiff was absent and may not have known of the hearing date as he had filed a notice to act in person. There is an order that parties take another date in the registry.

When the case came up for dismissal under the cited provisions one year had not expired from the date of the last order. It is therefore clear that the file was placed before the judge prematurely. I note from the record that both counsel for the plaintiff and the defendant did not appear on that said date. It may be safe to presume that none received the notice supposed to have been served by the registrar. Whatever the case, no prejudice can be said to have been visited upon the defendant considering that on 16th December, 2015 hardly six months before the dismissal order, that issue was not raised.

I find merit in the application and therefore the dismissal order made on 14th June, 2016 is hereby vacated and the suit reinstated. The court having certified the suit for hearing and ordered the trial to commence, the parties shall now take hearing a date in the registry. Each party shall bear their own costs.

Dated, signed and delivered at Nairobi this 6th Day of April, 2017.

A. MBOGHOLI MSAGHA

JUDGE