

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL CASE NO. 31 OF 2000

JULIUS NJOGU MURAGE.....PLAINTIFF

VERSUS

SILAS NJIRU KAMAU (Deceased).....DEFENDANT

R U L I N G

1. This is a notice of dismissal for want of prosecution under Order 17 Rule 2(1) issued on 28/03/2017. The plaintiff filed this suit in the year 2000 and has not prosecuted it.
2. The record shows and the plaintiff confirms it that he has hired several advocates who have given up for he does not contact them or give them the necessary instructions. The application filed his advocate Ombachi & Co. dated 29/01/2010 speaks volumes on the laxity of the plaintiff in prosecuting his case. The application was dismissed on 12/05/2010 for want of prosecution.
3. However, the suit remains intact. The plaintiff has now presented himself before the court after being served with the notice to show cause. He says that he was involved in an accident in 1999 in which he sustained serious injuries. He says he has been unwell and was not able to follow up his 17 year old case. He also states that his advocates on record were not attending court.
4. This is a case for compensation for the injuries sustained by the plaintiff in the 1999 accident. He suffered fracture of the leg which must have healed within a year as is normally the case.
5. The plaintiff did not produce a current medical report to shown that he was ill for the last 10 years when he took no action in prosecuting his suit. It is correct that he has sacked his advocates and not replaced them.
6. The defendant also seems to have abandoned the case and not followed it up. He did not appear in court for this notice to show cause.
7. Considering that the plaintiff is entitled to compensation for the injuries sustained in the accident for which the suit relates and that he has now appeared in court and said he is ready to fix a hearing date, I hereby allow his request.
8. I realize the injuries sustained attracts compensation within the pecuniary jurisdiction of the magistrates court.
9. I hereby make the following orders:-
 - (a) That this case be transferred to the Chief Magistrate's court for disposal.
 - (b) That the plaintiff sets down the matter for hearing and serve the defendant within 30 days in default of which the case will stand dismissed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 3RD DAY OF MAY, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

The Plaintiff