



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL SUIT NO. 191 OF 2006

DANIEL ODHIAMBO AWINDE.....1ST PLAINTIFF

MARGARET WANGARI WAINAINA.....2ND PLAINTIFF

VERSUS

KENYA WILDLIFE SERVICE.....1ST DEFENDANT

HON. ATTORNEY GENERAL.....2ND DEFENDANT

RULING

The plaintiffs herein filed a suit against the defendants in March, 2006 claiming various reliefs based on dismissal from service by the 1st defendant. The two defendants denied the plaintiffs' claim. This suit was not prosecuted for quite some time and on 27th February, 2015 the court dismissed it for want of prosecution under Order 17 Rule 2 (1) of the Civil Procedure Rules.

There is before me an application by way of Notice of Motion dated 12th May, 2015 to reinstate the suit that had been dismissed. The application is opposed. Both learned counsel have filed written submissions to the application the contents of which I have read. Order 17 Rule 2 (1) aforesaid provides as follows,

“In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”

The rule is clear that it is the court on its own motion that initiates the steps to be taken. I believe the rule is intended to ensure that where parties are not keen or interested in pursuing matters that have been lodged before the court, they should be reminded that the court is not a depository of matters not intended for action. The last time this matter was before the court was 17th June, 2013. Since then no action has been taken.

The defendants' counsel states that there was some inability to trace the court file, but between 2013 and the date when the suit was dismissed no effort had been made to locate the said file and the only letter pointing towards that effort is dated 30th March, 2015 addressed to the Deputy Registrar.

I do not wish to cast any aspersions on the contents of the said letter but as submitted by learned counsel

for the defendants the letter may have been initiated following the dismissal order aforesaid. There are several copies of letters annexed to the reply to the application by the plaintiffs' counsel showing that they had invited the parties to attend the registry to take hearing dates for the prosecution of the suit.

There are stamps by the counsel for the 1st defendant and State Law Office acknowledging receipt of the said letters but the court record does not show that any dates were taken following the efforts by the plaintiffs' counsel. It is therefore possible that indeed the court file could not be traced and that would confirm the reason why the suit has not been prosecuted.

It is accepted that the courts should endeavour to sustain the suit brought by litigants rather than dismissing the same. The order sought is discretionary and taking into account the obtaining circumstances in this suit, I am inclined to give the plaintiffs another chance to prosecute their suit. That being the case, the order made on 27th February, 2015 is hereby set aside and the suit reinstated.

The cause of action herein falls within the jurisdiction of Employment and Labour Relations Court and therefore this file shall be transferred to the said court for hearing and determination. The parties herein with assistance of the Deputy Registrar of this court shall ensure that this order (of transfer) is implemented within the next 14 days. The costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 12 day of April, 2016.

A. MBOGHOLI MSAGHA

JUDGE