



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL CASE NO. 130 OF 2000

FOUNDATION CHRISTIAN TEACHING.....PLAINTIFF

VERSUS

1. KEFA KHAUNYA

2. BEN N. SABWAMI

3. JANE S. NASIKUNGUDEFENDANTS

RULING

[1] This case came up for dismissal of the suit under Order XV11 Rule 2. The notice to dismiss the suit was issued by this court. This notice was issued on 15th May 2015 and served on the advocate for the parties.

[2] The parties and/or their advocates did not attend the court on 1st July 2015 the date the parties were to show cause why the suit should not be dismissed. The court therefore dismissed the suit for want of prosecution. The notice to dismiss the suit was issued because the parties had not taken action on the suit since 9th July 2014 when the case was stood over generally. That adjournment generally had been occasioned by an application by the advocate for the plaintiff who applied for the same on 27/5/2014. In other words it is the court that fixed the suit for dismissal.

[3] During the hearing of this application, the applicant dwelt on the fact that the court was not sitting on the morning of 1/7/2015 and that he was told to come the following day, only to find the matter was dismissed on the afternoon of 1/7/2015 and for that reason the applicant wants the suit to be reinstated.

[4] The respondent vehemently denies the allegation of the plaintiff. He says that the court record speaks for itself and that the case was properly dismissed on 1/7/2015. The respondent argues that the issue here is that the applicant while arguing this application, did not show cause why this suit should not be dismissed for want of prosecution since it was stood over generally. He argued that this case is over 15 years old. The same having been filed in the year 2000.

[5]The respondent herein has been spot on. The issue that the applicant was to explain to the court was why the suit has been dormant since it was stood over generally on 9/7/2014. Even if, I were to reinstate this case, that will still be the issue. The applicant was given a chance to do so on 1/7/2015 and he never attended the court. He was given a second bite of the cherry in his address to court in this application and did not explain the delay. The record of the case shows that he has not taken a proactive position in his

suit. This had lead his suit to be dismissed for want of prosecution. I was not given any reason to show why the suit should not be dismissed under Order XV11 Rule 2 of the Civil Procedure Rules.

The application filed herein is truly without merits. I dismiss it with costs to the respondents.

Dated at Bungoma this 11th day May 2016

S.MUKUNYA - JUDGE

Ruling read in open court in presence of

C.A Nyongesa,

Mr. Musumba for the defendant

Areba for the plaintiff

S.MUKUNYA - JUDGE

11/5/2016