

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

HIGH COURT CIVIL APPEAL 228 OF 2011

GAPCO KENYA LIMITED.....PLAINTIFF

VERSUS

1. HAKIKA TRANSPORT SERVICES LTD

2. HASSILIANO MASETI.....DEFENDANTS

R U L I N G

1. The defendant has by a Notice of Motion dated 28/7/2016 applied that the plaintiff suit against the defendants be dismissed with costs for want of prosecution. The application was supported by the supporting affidavit of one HAROLD WAFULA MUFUTU whose gist was that the matter was last substantively in court on the 27/11/2013 when it was adjourned at the instance of the plaintiffs' advocate who sought an adjournment to enable him get instructions. After that adjournment no steps were taken to prosecute the matter except that an application was filed by the plaintiffs advocate by which they sought leave and were indeed granted leave to cease acting for the plaintiff on the 27/10/2015.

2. To the application no responses were ever filed with the consequence that under order 51 Rule 14, the same was deemed unopposed and was ordered to proceed after an affidavit of service sworn by one STANLEY AURA was filed to show that the plaintiff was duly served in person.

3. The only issue for determination is whether or not the defendant have established a right to move the court under Order 17 Rule 2(3) and if that be true, if the Plaintiff has shown cause to the satisfaction of the court why the suit should not be dismissed.

The Rule provides:-

“Any party to the suit may apply for its dismissal as provided in sub-rule 1”.

4. I have perused the court file and noted that on 27/11/2013 the matter was adjourned at the instance of Mr. Asige who appeared for the plaintiff who informed the court that he was still awaiting instructions from the client, the plaintiff. That appearance followed others when the parties had been directed to file witness statements to no avail.

5. The need for the parties to assist the court meet its overriding objectives cannot be overemphasised. It is the cornerstone upon which the respect for court system as the bulwark for democracy and rule of law rests. It therefore behoves every citizen who files a matter in court to ensure that the same is not unnecessarily dragged in court without being pushed towards its logical conclusion.

6. In the matter before the court now, I agree with the defendant that the last time the matter was substantively before court towards its prosecution was on the 27/11/2013 when it was due for mention and when parties here directed to take a date at the Registry because the plaintiff had not given instructions to the advocate.

7. Indeed more than one year after that date, in a move that seems to prove that there were no instructions forthcoming from the plaintiff, its advocates filed an application to be allowed to cease acting for the

plaintiff and the application was allowed on 27/10/2016.

8. To the court, the plaintiff having not taken any steps to prosecute the suit since 27/11/2013 is deemed to have lost interest in the suit and therefore the defendant has properly invoked the law under Order 17 Rule 2. I find merit in the application and allow it with the consequence that the plaintiffs suit against the defendants is hereby dismissed with costs to the defendants.

Dated at Mombasa this **10th** day of **October 2016**.

P.J.O. OTIENO

JUDGE