

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NUMBER 395 OF 2012

RETIREMENT BENEFITS AUTHORITY.....PLAINTIFF/RESPONDENT

VERSUS

PYRETHRUM BOARD OF KENYA.....DEFENDANT/APPLICANT

RULING

1. The Plaintiff filed this suit against the Defendant on 24th October 2012. The Defendant upon service filed its Statement of Defence on the 5th November 2012.

Together with the Plaintiff the plaintiff by its Notice of Motion filed on the same day sought Injunctive Orders against the Defendant to restrain it from disposing off its non-core assets by public auction. Interim Orders of Injunction were granted on the 24th October 2012. Upon interpartes hearing, the court in its Ruling dated 15th March 2013 dismissed the application on the grounds that the Plaintiff/Applicant, being a regulator of Retirement Benefit Schemes had no contract with the Defendant/Respondent, nor a trust relationship by virtue of any deed to which it is a party with the Respondent. The court further made a finding that it is only the Receiver or Liquidator once appointed and empowered by the court who had or has the necessary *locus standi* and cause of action to demand for the defendant, as sponsor of the scheme, the payment of the members and its own contributions to the scheme.

It was further held that until such time a Receiver or Liquidator was appointed, the plaintiff has no *locus standi* to institute the suit. The suit was not dismissed. That was on the 15th March 2013.

2. The defendant by its application dated 10th February 2015 brought under Order 17 rule 2(3) and 51 rule 1 of the Civil Procedure Act seeks an order that the plaintiff's suit be dismissed for want of prosecution, on the grounds that since the 15th March 2013, no action has been taken by the plaintiff to prosecute the same, that the plaintiff has lost interest in the suit and that the continued pendency of the suit is prejudicial to the defendant.

3. In opposing the application, the defendant in its lengthy Replying Affidavit by one Dr. Edward Odundo, the Chief Executive Officer of the Authority sworn on the 20th April 2015, in my view reiterate its depositions in its earlier Affidavit sworn on the 24th October 2012 by the Board Secretary, David Nyakundi in support of the application for an injunction against the defendant which the court denied it in its Ruling dated the 15th March 2013.

4. I have considered the averments in the Replying Affidavit aforementioned. It is deposed that part of the delay in prosecuting this case is due to the **Winding Up Cause No. 24 of 2012** that it was stated was coming up for hearing on the 22nd March 2015. The court was not told whether the cause has been heard or not. It is acknowledged that the court held that the plaintiff had no cause of action against the defendant and had no *locus standi* to bring this suit. The plaintiff having acknowledged its incompetence and non suitability in the suit, it then makes no legal sense for the plaintiff to seek for opportunity to proceed with the prosecution of the case. In my view, the court's Ruling of the 13th May 2013, and its finding that the plaintiff had no cause of action against the defendant is the main reason for the want of prosecution of the suit. As far as I can discern from the court records, there is no appeal against the said Ruling of the 15th March 2015. That being the case, I find it a contradiction in terms that the plaintiff has urged the court to allow it an opportunity to prosecute the case.

5. I have considered all the rival argument and authorities by counsel. I have no doubt that the continued pendency of the suit in the court when it has pronounced that there is no cause of action and that the plaintiff has no *locus standi* to bring the suit will be to go against the provisions of Section 1A and 1B of the Civil Procedure Act that enjoins the court to expeditiously resolve civil disputes in just determination of the proceedings. The authorities tendered by the plaintiff are irrelevant in the context of the matter as, they address the issue of delay to prosecute the suit which in my view is now, secondary. The Ruling of the court dated 15th March 2013 that in my view has finally determined the suit.

For those reasons, the continued pendency of the case is prejudicial to the defendants interest and adds to the court's backlog that it is jealously trying to address. Having said so, the application dated 10th February 2015 is allowed and the suit is hereby dismissed.

Each party shall bear its costs of this application and the suit.

Delivered, dated and signed in open Court this 16th day of July 2015

JANET MULWA

JUDGE