

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 183 OF 2009

JACK & JIL SUPERMARKETS LIMITED..... PLAINTIFF

VERSUS

VIKTAR MAINA NGUNJIRI.....DEFENDANT

RULING

1. Viktar Maina Ngunjiri, the Defendant herein took out the motion dated 31.1.2013 in which he applied for this suit to be dismissed for want of prosecution. The motion is supported by the affidavit sworn by the Defendant. Despite service of the application being effected upon the firm of S. Musali Mwenesi Advocates for the Plaintiff, no response was filed hence the motion proceeded for hearing *ex parte*.
2. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavit filed in support of the motion. I have further considered the oral submissions of Miss Migiro learned advocate for the Defendant. It is the submission of the Defendant that pleadings closed on 12th May 2009.
3. It is argued that a hearing notice for the 30.9.2009 was served upon the Defendant on 28.5.2009. It is said that since then the plaintiff has not shown any interest in preparing the suit for trial hence the suit should be dismissed for want of prosecution.
4. I have carefully perused the record and it is apparent that this suit has never been fixed for hearing since pleadings closed.
5. The record shows that the Plaintiff filed the motion dated 28.4.2009 which application was heard and finally dismissed on 14.12.2010. An oral application for stay was heard and refused on the same date. Since then, no steps have been taken to have the suit fixed for hearing. It is now more than five years since pleadings closed yet the Plaintiff has not taken steps to have this suit prosecuted. Despite having been served with the motion seeking to dismiss the suit for want of prosecution, the Plaintiff has not filed any response to show cause why the suit should not be dismissed. I find the delay to prosecute to be contumelous inordinate and inexcusable. I am satisfied that the Plaintiff has lost interest in pursuing this case.
6. In the end, I find the motion dated 31.1.2013 to be well founded.

It is allowed as prayed.

Dated Signed and Delivered in open court this 6th day of November, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant