



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL SUIT NO. 247 OF 2008**

**LUNJALU JORAM OKOTSI.....PLAINTIFF**

**VERSUS**

**THE VICE CHANCELLOR UNIVERSITY OF NAIROBI...1<sup>ST</sup> DEFENDANT**

**UNIVERSITY OF NAIROBI.....2<sup>ND</sup> DEFENDANT**

**RULING**

Before me is an application to dismiss the plaintiff's suit for want of prosecution. The application is brought under section 1A and 1B of the Civil Procedure Act and order 17 rule (2) and orders 51 Rule (1) of the Civil Procedure Rule. The defendant/applicant also seeks costs of the application and the entire suit. The application is based on 12 grounds stated on the face of the application as follows;

1. On 13<sup>th</sup> June 2008 the plaintiff instituted the suit against the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
2. On 27<sup>th</sup> August 2008 the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed the Memorandum of appearance and subsequently filed the statement of defence dated 5<sup>th</sup> September 2008.
3. The plaintiff filed the reply to defence on 19<sup>th</sup> September 2008.
4. On 15<sup>th</sup> January 2009 the plaintiff filed their list of documents.
5. On 23<sup>rd</sup> March 2009 the 1<sup>st</sup> and 2<sup>nd</sup> defendants and plaintiff filed the statement of agreed issues dated 20<sup>th</sup> March 2009.
6. The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed their list of documents dated 29<sup>th</sup> April 2009 on 4<sup>th</sup> May 2009.
7. On 31<sup>st</sup> October 2011 the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed their witness statements and subsequently filed their bundle of documents on 30<sup>th</sup> November 2011.
8. The matter last came up for hearing on 26<sup>th</sup> September 2012 but was taken out of the hearing list.
9. It has been a year since the matter was last in court and the plaintiff has not shown any interest in preparing the suit trial.
10. The plaintiff has failed, refused and/or neglected to further progress with the suit.
11. The delay in prosecuting the suit has caused the 1<sup>st</sup> and 2<sup>nd</sup> defendants undue prejudice and therefore cannot be given a fair hearing.
12. It is in the interest of justice that the case be dismissed for want of prosecution.

It is supported by the affidavit of Prof. Peter Mbithi which reiterates the grounds.

The application was opposed; the plaintiff Lunjalu Joram Okotsi swore a replying affidavit. He states that

he is still interested in the matter, that since 26/9/12 his advocate has been making efforts to have the matter fixed for hearing, that the mistakes of his advocate should not be visited upon an innocent client; that he is willing to prosecute the matter but his advocate has told him that the diary for 2014 has been closed.

There is also the affidavit of Balongo Kelvin a legal clerk in the firm of Ababu Namwaba & Co. Advocates. He depones that he has made attempts to serve the defendant's firm with invitations to fix dates: That he is aware that the registry has confirmed that the diary for 2014 has been closed.

I have considered all that has been deponed. It is evident that the respondent/plaintiff has made attempts to have the matter listed for hearing since September 2012. In the interest of justice I will not grant the orders sought. I will give the plaintiff a chance to prosecute the case. The plaintiff should comply with the provisions of order 11 within 30 days from today and once the Court diary is open have the matter fixed for hearing. I therefore decline to grant prayer no. 1 of the application dated 31/10/03. Costs shall be in the cause.

Dated, signed and delivered this *13<sup>th</sup>* Day of *March* 2014.

**R. E OUGO**

**JUDGE**