



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
MISC APPLICATION NO 545 OF 2007

ROSE N WAIGWA.....PLAINTIFF

VERSUS

UNIVERSITY OF NAIROBI.....DEFENDANT

R U L I N G

1. This ruling concerns the Defendant's application by **notice of motion dated 3.4.2013** for dismissal of the Plaintiff's suit for want of prosecution. The Plaintiff has opposed the application.
2. I have read the supporting and replying affidavits. I have also perused the court record. Finally, I have considered the submissions of the learned counsels appearing. No authorities were cited.
3. It appears common ground that this suit was last before a judge on 26/10/2011. The judge directed the parties to comply with pre-trial requirements. The Defendant did so. The Plaintiff did not. By the date the present application was filed on 04.04.2013 the Plaintiff had not done anything, since 26.10.2011, to advance her suit towards hearing. That is a delay 1½ years.
4. The only explanation for the delay that the Plaintiff has offered is to blame her former advocates. There is also allusion to the effect that some other person had passed himself off, and unlawfully, as the Plaintiff's advocate while knowing that he did not have an advocate's practising certificate.
5. The days are long gone now when a party in default will simply rise and blame his advocate without more. There is always a cause of action in professional negligence due to a client who has been failed by his advocate. It is not right that the opposite party should always suffer due to the default of his opponent's advocate.
6. In the present case the Plaintiff has not demonstrated any empirical and positive step she herself took to prod her advocates towards prosecution of the case. All she has done is to blame her former advocates. I find no reason why the suit should continue to hang over the head of the Defendant.
7. I will in the event allow the application. The Plaintiff's suit is hereby dismissed with costs to the Defendant for want of prosecution. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 6th DAY OF JUNE 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 11TH DAY OF JUNE 2014