

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO 355 OF 2011

CECILY MBARIRE.....PLAINTIFF

VERSUS

1. PATRICK LUMUMBA
2. KENYA ANTI-CORRUPTION COMMISSION.....DEFENDANTS

R U L I N G

1. The 1st Defendant seeks by **notice of motion dated 3rd April 2013** dismissal of the Plaintiff's suit for want of prosecution. The application is brought under **Order 17, rule 2(3)** of the **Civil Procedure Rules, 2010 (the Rules)**. The 2nd Defendant supports the application.

2. The Plaintiff has opposed the application by **replying affidavit filed on 8th May 2014**.

3. I have read the supporting and replying affidavits. I have also considered the submissions of the learned advocates appearing. Finally, I have also perused the court record.

4. The last pleading filed in this case appears to be the 2nd Defendant's statement of defence which was filed on 27th October 2011. It is not readily apparent when that statement of defence was served; I will for purposes of the application at hand assume that the pleadings closed on or about 30th November 2011 to allow for service.

5. So, the Plaintiff took no step towards prosecution of her case from closure of pleadings to the time the present application was filed on 4th April 2013, a period of approximately one year and four months, not three (3) years as urged by the 1st Defendant.

6. The Plaintiff has stated on oath that she made many efforts to get in touch with her previous advocate to prepare the case, but without success; even her new advocates have not been able to elicit any response from the previous advocate.

7. In the meantime the new advocates have complied with the requirements of **Order 11** of the Rules, and from the Plaintiff's end the suit is ready for trial.

8. In these circumstances I am satisfied that a fair trial of the action will be possible without much further delay. Any inconvenience and prejudice so far suffered by the 1st Defendant will be adequately compensated by an award of costs.

9. I will therefore refuse the application; it is hereby dismissed. But I will award costs of the application, hereby assessed at KShs 20,000/00, to the 1st Defendant. These costs are payable within thirty (30) days of delivery of this ruling. In default the 1st Defendant may execute for the same. At delivery of this ruling the court shall give directions regarding pre-trial conferencing. Those will be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 14th DAY OF JULY 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 16TH DAY OF JULY 2014