



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NO. 124 OF 2004

DINAH LIMO..... PLAINTIFF/RESPONDENT

VERSUS

JONAH KIPKORIR LIMO.....DEFENDANT/APPLICANT

RULING

1.This is the defendant's Notice of Motion dated **6th May, 2008** seeking an order of this court to dismiss the suit for want of prosecution and costs thereof. The Application is expressed to be brought under **Order XV1 Rule 5 (d), Order L Rule 1** of the **Civil Procedure Rules**, section 3 of the Civil Procedure Act Cap 21 and all enabling provisions of the Law.

2. The application is anchored on a Supporting Affidavit deposed to by the counsel for the defendant **Kisilah Daniel Gor** sworn on **7th May, 2008** on the grounds that the plaintiff has no conceivable and /or perceived interest in the suit herein and the continued pendency of the suit herein unprosecuted has been oppressive, prejudicial and vexatious to the defendant. He avers that the plaintiff filed this suit **on 5th May, 2004** and the suit was last set down for hearing on **28th June, 2004**; that there is a clear exhibition of lack of enthusiasm on the part of the plaintiff which indolence is oppressive to the applicant.

3. An affidavit of service was sworn by Bernard Owuoche, a process server of this court, on **7th December, 2013** in which he deposes that he personally served the plaintiff who acknowledged service. The plaintiff did not respond to the application nor appear in court on **17th February, 2014** despite service.

4. I have perused the court record and heard submissions by counsel for the defendant. I take the following views on the matter.

5. Before this application, the applicant's counsel was last in court on **7th July, 2010** praying that he be allowed to cease acting for the applicant. It appears that once the plaintiff failed to obtain injunction orders in the application filed contemporaneously with the suit dated **5th May, 2004** which was dismissed with costs on **24th September 2004**, she lost interest in the matter and has not taken any action to have the suit set down for hearing.

6. It is true to say that the court should be slow to dismiss a suit for want of prosecution if the suit can be heard without any further delay, if the defendant will not suffer any hardship and if there has been no flagrant and culpable inactivity **Victory Construction Company vs. A. N. Duggan (1962) E.A. 697**. But in this case where the Plaintiff has taken no action to move the court, I am persuaded that the plaintiff has lost interest in the suit.

7. I agree with counsel for the defendant that the continued pendency of the suit herein unprosecuted will be highly prejudicial and oppressive to the defendants/applicants.

8. I therefore find the Notice of Motion dated 6th May, 2008 merited and dismiss the plaintiffs suit for want of prosecution with costs.

Dated, signed and delivered at Nakuru this 4th day July of 2014

L. N. WAITHAKA

JUDGE

PRESENT

N/A for plaintiff

N/A for Defendant

Emmanuel Maelo: Court Clerk

L N WAITHAKA

JUDGE