REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO. 540 OF 2009

ANANDA MARGA UNIVERSAL RELIEF TEAM (AMURT) …….……. PLAINTIFF

VERSUS

AMURUT (INTERNATIONAL)…….…..... DEFENDANT

R U L I N G

1. Before me is a Notice of Motion dated the 1th October, 2013. The application is brought under Order 17 rule 2(1) and (3), Orders 51 rule 1, 2, 3 and 4 of the Civil Procedure Rule, section 1A, 1B and 3B of the Civil Procedure Act. The applicant is seeking the following orders that;

(1) The suit be dismissed for want of prosecution

(2) The costs of this application of the application be awarded to the Defendant.

2. The application is based on grounds stated on the supporting affidavit sworn by Gad Gathu an advocate of the High Court of Kenya practicing in the firm of Mucheru - Oyatta & Associates and Company Advocates. Counsel depones that he has the conduct of the suit on behalf of the defendant and is familiar with the facts and is competent to swear the affidavit. He depones that the matter was last in Court on 9th October, 2012 when it came up for the plaintiff's ruling on his application dated 12th October, 2009 seeking injunctive orders which was dismissed with costs. That it is now one year since the matter was last in Court and the Plaintiff has not made any effort to set down the matter down for hearing and that the plaintiff has demonstrated indolence as demonstrated above clearly shows disinterest in this suit and its continued presence is prejudicial to the defendant; that it is only fair and just that this suit be dismissed for want of prosecution.

3. The application was opposed and the plaintiff/respondent filed a replying affidavit sworn by Jitenda Kumar on 4th April, 2014. He deponed that he was the co-director of the plaintiff. He admits that the suit was last in Court on 9th October 2012 when a ruling was delivered and being dissatisfied by the said ruling filed a notice of appeal and applied for typed proceedings and that the same are not yet ready for collection; that the current application is premature and unwarranted as the suit has to await the outcome of the intended appeal.

4. Counsels made oral submissions in Court on 14th May 2014 when the application came for hearing. Mr. Gathu argued that it was not in dispute that no steps have been taken to set the matter down for hearing since 9th October, 2012 when the matter came up for ruling for the plaintiff's application dated 12th October, 2009 and that it has been 1 year 7 months since and that the suit is ripe for dismissal; that the explanation from the plaintiff respondent that they filed a notice of appeal

against the said ruling is untenable and the same is not sound in law; that Order 42 rule 6(1) clearly states that an appeal cannot operate as a stay of proceedings or execution and no application has been filed in this Court in that regard and urged the Court to allow their application dated 10th October 2013.

5. Mr. Mwangi for the plaintiff/ respondent argued that they have filed a notice of appeal and that the delay in filing the appeal is beyond the plaintiff/respondent's control; that the plaintiff is aggrieved and so is the defendant and argued that the defendant/respondent's application be dismissed.

6. Mr. Gathu in reply argued that the respondent's counsel did not address the issue of stay of proceedings and that that renders all that he had to say inadmissible and of no value that the period in question is between 9th October to date and anything apart from that is irrelevant.

7. I have perused the documents on record. There is a Notice of appeal dated 17th October 2012 filed on the same date. There is also a letter dated 17th October, 2012 addressed to the Deputy Registrar requesting to be supplied with certified copy of proceedings and the said ruling to enable the plaintiff/respondent file an appeal. Since then the plaintiff has not made any follow up on the said typed proceedings and ruling to facilitate him file his appeal. It's apparent the plaintiff has not taken any steps to prosecute the matter. Should I dismiss the suit? I have considered the period of delay which is 1 year 7 months, which in my view is not in ordinate delay considering the facts that the typed proceedings are yet to be obtained. Further I also note that the plaintiff responded to this application and in my view this indicates its interest in prosecuting the suit. I agree that the notice of appeal does not serve as a stay, but a suit is pending before this Court. In the interest of justice I will exercise my discretion in the respondent's favor. I order that the respondents shall set down the suit for hearing within the next 45 days from the date of this ruling failure to which the suit shall stand dismissed with costs to the applicant. The respondents must ensure that provisions of Order 11 are complied with within the said period of 45 days. Cost shall be in the cause.

Orders accordingly

Dated, signed and delivered this **12th** day of **September 2014.**

R.E. OUGO

JUDGE

In the presence of:-

……For the Plaintiff/Respondent

……...For the Defendant/Applicant

……..……Court clerk