



**REPUBLIC OF KENYA**

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

**CIVIL SUIT 639 OF 2007**

**ANNAH WAMBUI..... PLAINTIFF**

**VERSUS**

**AVENUE HEALTHCARE LIMITED..... DEFENDANT**

**RULING**

Application dated 18/5/2011 seeks orders for dismissal of this suit for want of prosecution under Order 17 rule 1 (3) Civil Procedure Code on the ground that the plaintiff has failed to take any steps to prosecute the case since may 2009. The application is supported by affidavit of Angela Kiptoo which shows that suit was filed on 10/9/2007 that compliance of the procedure required was completed by 25/5/2009.

A proposal for an out of court settlement in June 2009 came to nothing and to date the plaintiff has not taken any steps to return the matter to the hearing list.

In replying affidavit for plaintiff it is submitted that the plaintiff has taken steps in the matter. The plaintiff has complied with the requirements of Civil Procedure Code 2010 to enable the suit to be fixed for hearing. That the plaintiff has subsequently attempted to explore a settlement out of court. Then the plaintiff left the country to U.S.A and the defendant filed this application seeking dismissal of this suit. Correspondence continued and by a letter on 14/12/2011 the counsel informed that they had no instructions to settle the matter out of court. The plaintiff invokes the provisions of Section 1A, 1B Criminal Procedure Code 2010 and Article 159 Constitution of Kenya for orders of dismissal not to be granted. The delay is not inordinate. The plaintiff intends to pursue the case to its end.

Upon perusing the application and the replying affidavit I am convinced that the plaintiff has not lost interest in her case. The provisions of Order 17 Civil Procedure Code provides that if the court is satisfied that the plaintiff has shown reasonable course for the delay caused the court shall exercise its discretion in favour of the respondent.

In this case I find that the plaintiff is keen to prosecute her case and has shown satisfactory reason for delay.

I therefore dismiss the application but order the plaintiff to place this case on hearing list within next 45 days from today.

Orders accordingly.

**Dated and delivered at Nairobi this 4<sup>th</sup> day of July, 2012.**

**J.N. KHAMINWA**

**JUDGE**