

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Civil Suit 83 of 2004

PATRICK KISAKA MUNIAFU.....PLAINTIFF

~VERSUS~

TOTAL KENYA LIMITED.....DEFENDANT

RULING

The Plaintiff is the administrator of the estate of the deceased Nicholas Lukorito Kisaka who died following a fatal road accident on 6/6/2000 along Nakuru-Nairobi Highway. The Plaintiff alleged that the deceased was by the time employed by the Defendant. The suit was brought to claim terminal dues and benefits arising from the death. The dues and benefits were said to be Ksh.1,523,898/55. The Defendant filed a defence denying that the deceased was its employee or that it was entitled to pay the dues and benefits. On 20/8/2008 the Defendant filed a chamber application dated 14/5/2007 seeking to have the suit struck out and/or dismissed with costs because it was frivolous and vexatious as the Plaintiff did not have the *locus standi* to bring it. It was also alleged that the plaint would otherwise prejudice, embarrass and delay the fair trial of the action, and that the suit was an abuse of the process of the court. The application was brought under the then Order VI rule 13 (1) (b), (c) and (d) of the Civil Procedure Rules. The Plaintiff filed a replying affidavit to oppose the application.

On 24/2/2010 the Defendant went to the registry and was allocated 6/12/2010 as the date for the hearing of the application. It would appear that the date was not served and the parties went quiet.

On 20/7/2011 the court on its own motion dismissed the suit for want of prosecution. It is evident that there was no notice to the parties. I agree with the Plaintiff that the dismissal was irregular. I allow the application dated 17/8/2011 and set aside the order dismissing the suit. The suit is reinstated. In view of the fact that both parties have participated in the delay that has led to non-resolution of the case, I make no order as to costs.

Dated, signed and delivered at Bungoma this 3rd day of October, 2012.

A. O. MUCHELULE
JUDGE