



COPY

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC. NO. 130 OF 2011

ASTRID DORIS PETRA BWAZA PLAINTIFF/RESPONDENT

-VERSUS-

SALESIANS OF DON BOSCO DEFENDANT/APPLICANT

RULING

[1] In my ruling dated 12th February, 2014 I stated;

"It is quite apparent that the plaintiff in this case wants to use the consent order as a shield to prevent any further step to be moved in this case. The Preliminary Objection he raised has no merits in view of what I have stated above. The consent order of 1st November 2011 is hereby set aside. This suit shall be fixed for hearing within 30 days failing which the respondent shall be at liberty to apply for it to be struck out for want of prosecution. The applicant in this application shall have costs of his application of 3rd March, 2013.

Dated and delivered in open Court at Mombasa this 12th day of February, 2014".

When the above ruling was read, counsel for the respondent applied for leave to appeal which I duly granted. This matter was listed for hearing on 13th March, 2014. Counsel for the applicant applied for the matter to be mentioned outside the 30 days. I granted the said mention outside the 30 days. The matter thereafter came for mention on 4th April, 2014 and on 10th April, 2014.

[2] The parties later fixed the case in the registry for hearing on 19th June, 2014 for the notice of motion dated 7th April, 2014. The application of 7th April, 2014 was for the suit herein to be dismissed for want of prosecution on the grounds that the plaintiff has not made any efforts to list the suit for hearing within one month as ordered by the court. The respondent now says that the court extended the 30 days the plaintiff was supposed to fix his suit for hearing.

[3] *Did the court really extend that time?*

On 13th March, 2014 when the court had fixed the case for mention to find out if its orders of 12th February had been complied with, the plaintiff had not fixed the suit for hearing. The applicant's advocate then applied for time to be extended to mention the matter outside 30 days. This request was granted. There was no request to set aside, vary extend or stay the courts orders of 12th February, 2014. They remained in force. Requesting for a mention date outside 30 days ordered by court in absence of the

advocate for the defendant cannot be said to have waived, varied, stayed or extended those orders of 12th February, 2014. If the applicant wished to have any of the aforesaid reliefs he should have asked for them. He had benefit of counsel and he must have been well advised.

It is therefore true that the plaintiff did not comply with the court orders of 12th February, 2014. The defendant was well within his rights to apply for the suit to be dismissed as per the order aforesaid.

[4] Court orders should be obeyed at all times. The court order under reference was merely to fix the suit for hearing. This was not done. These court orders were neither challenged nor stayed. I am therefore convinced that the plaintiff has made a case for the plaintiff's suit to be dismissed as ordered by the court order of 12th February, 2014 aforesaid. This suit is dismissed with costs to the defendants.

Dated and delivered in open court at Mombasa this 16th day of September 2014.

S. MUKUNYA

JUDGE

16.9.2014

In the presence of:

Miss. Mutuku advocate for Mr. Opullu advocate for the plaintiff

Mr. Achoki Advocate for the defendant