



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL SUIT NO. 345 OF 1995

WILLIAM CHEROBON ARAP CHEPKWONY PLAINTIFF
VERSUS

ONGERE BOSIRE 1ST DEFENDANT

NELSON J. BICHANGA t/a KISII EXPRESS 2ND DEFENDANT

RULING

The defendants' application dated 21st May, 2008 seeks dismissal of this suit for want of prosecution. It was made on the ground that for a period of more than two years no step had been taken to fix the matter for hearing. The delay was inordinate and inexcusable.

According to an affidavit sworn by **Susan W. Murage**, the defendant's advocate, the matter was last fixed for mention on 18th July, 2005 when it was stood over generally. The continued pendency of the suit was prejudicial to the defendant.

The plaintiff filed a replying affidavit and stated that a consent on liability had already been recorded at the ratio of 78:22 in his favour. Thereafter he had been subjected to various medical examinations in an effort to have a settlement on quantum of damages being reached. However, he has been sickly and bed-ridden and as such he had not kept in touch with his advocates. He urged the court to exercise its discretion in his favour.

I have considered the contents of the affidavits on record and the brief submissions by counsel. There can be no denial that the plaintiff's suit has not been prosecuted diligently. The defendant was justified in filing an application for dismissal of the suit for want of prosecution. But in the interest of justice and considering the age and medical condition of the plaintiff I will not dismiss the suit.

Bearing in mind that only assessment of damages is remaining, I direct that this suit be set down for assessment of damages within the next 90 days from the date hereof. The registry is directed to fix a hearing date on priority basis.

The plaintiff shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT KISII THIS 29TH DAY OF JULY, 2010.

D. MUSINGA

JUDGE.

29/7/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Mbicha for the Plaintiff

Mr. Oguttu HB for Mrs. Wagaki for the Defendants.

Court: Ruling delivered in open court on 29th July, 2010.

D. MUSINGA

JUDGE.