



**Njamura & another v Azima Credit Limited (Commercial Case
2 of 2020) [2023] KEHC 27393 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 27393 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
COMMERCIAL CASE 2 OF 2020
DO CHEPKWONY, J
SEPTEMBER 29, 2023**

BETWEEN

MACHARIA NJAMURA 1ST PLAINTIFF

CONSOLATA WAMBURA MUTURI 2ND PLAINTIFF

AND

AZIMA CREDIT LIMITED DEFENDANT

RULING

1. Before the court is a Notice of Motion application dated 20th June, 2023 filed by the Defendant under Sections 3A, 1A and 1B, all of the *Civil Procedure Act* and Order 10 Rule 10 and Order 51 Rule 1 both of the *Civil Procedure Rules* and all other enabling provisions of the law.
2. The Application seeks the following orders:-
 - a. That the Honourable Court be pleased to grant leave to the Defendant/Applicant to file its Statement of Defence and Counterclaim.
 - b. That the cost of this Application be in the cause.
3. The Application is based on the Supporting Affidavit of John Nduati Kibathi in his capacity as the Director of the Defendant sworn on the same date of 20th June, 2023 and the following grounds:
 - a. That the Defendant/Applicant were never served with an intention to sue them.
 - b. That all along the Defendant/Applicant thought that the 1st Plaintiff would contact them on the payment and not what is before this Honourable court.
 - c. That when they were served with the Plaintiffs' documents, they tried to engaging the 1st Plaintiff to try and agree on the payment plan but he ignored them.



- d. That the Defendant/Applicant appointed the Advocate on record to peruse the file, upon perusal the advocate advised them on the cause of action hence this application.
 - e. That the Defendant/Applicant has a valid defence and counterclaim which raises triable issues which ought to be determined at full trial on merits.
 - f. That the Application has been made timeously and without unreasonable delay on the part of the Applicant
 - g. That the plaintiffs will not suffer any prejudice if the application is allowed.
 - h. That if this application is not granted at this point in time the Defendant stands to suffer unnecessary financial loss.
4. When the matter came up for Directions on 21st September, 2022 on the present application, Counsel for the Defendant informed the court that it had served the application upon the Plaintiff and an Affidavit of service filed on through e-filing system.
 5. From the case tracking system there is an Affidavit of Service filed by the Defendant's Counsel sworn on 26th July, 2023 which confirms service of the present application. Further, there is an Affidavit of Service for the date of 28th September, 2023 which also confirms service upon the Plaintiff's Counsel. The court notes that the said Plaintiff's firm of Advocates on record being Ario & Company Advocates acknowledged receipt of service of the two documents which is sufficient evidence that the Application herein was served.
 6. The application being unopposed and there having been no action taken since the suit was filed, this court finds that there will be no prejudice occasioned upon the Plaintiff's Counsel if the same is allowed. It is worth noting that the Plaintiff has not been keen on taking any steps in having the suit prosecuted. The court further notes that the application dated 19th December, 2019 and filed on 15th January, 2020 was dismissed by the court on 14th July, 2020 for non-attendance and there being no further step taken by the Plaintiff.
 7. In the circumstances, the court finds that the Notice of Motion Application 20th June, 2023 is merited and proceeds to order that:-
 - a. The Defendant is hereby granted leave to file its Statement of Defence and Counterclaim within 30 days hereof.
 - b. The Plaintiff is granted corresponding leave to file Reply to Defence and Defence to the Counterclaim within 14 days of service of the Defence and Counterclaim.
 - c. Mention on 13/11/2023 to confirm compliance and take further directions. In the event of noncompliance by the Plaintiff, the suit shall stand dismissed for want of prosecution without reference to the court.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 29TH DAY OF SEPTEMBER , 2023

D. O. CHEPKWONY

JUDGE

In the presence of:



Mr. Chacha holding brief for M/S Giteru for the Defendant/Applicant
Court Assistant - Martin

