

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 575 OF 2010

NEW FOUR STAR PLUS LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

KENYA RAILWAYS CORPORATION.....DEFENDANT/APPLICANT

RULING

This is an application dated 21st January, 2019 by way of Notice of Motion under Order 17 Rule 2 (3) and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A,1B and 3A of the Civil Procedure Act, seeking an order that the plaintiff's suit against the defendant be dismissed for want of prosecution, and costs be borne by the plaintiff. It is supported by grounds set out on the face of the application and the supporting affidavit sworn by Rubeena Dar Advocate for the defendant.

The application is opposed and there is a replying affidavit sworn by K.S. Bhullar the Advocate for the plaintiff. This is not the first application seeking the same order. From the record, there is an application dated 12th March 2014 seeking the same orders, but was dismissed in a ruling dated 6th May, 2015 with some conditions attached thereto.

Parties have filed submissions relating to the present application. Upon going through the record before me however, I have observed the following. There is no evidence summons to enter appearance have ever been served upon the defendant. There is no defence filed on behalf of the defendant. What there is, is a plaint and an injunction application both filed on 25th November, 2010. In the grounds of opposition to the application dated 25th November, 2020 the defendant stated that this court has no jurisdiction to hear or entertain the suit and should struck out with costs. I believe that may be the reason why no defence was filed.

Be that as it may, there appears to have been no ruling made by the court to address that application and this escaped the notice of the court when dealing with the earlier application dated 12th May 2014. I am of the view that before the present application dated 21st January, 2019 is determined, a ruling has to be made based on the application by the plaintiff filed on 25th November, 2010. This is because it is that application that prompted the filing of the grounds of opposition challenging the jurisdiction of this court.

Parties therefore must agree on the way forward but above all, in addition to the grounds of opposition, whether this court has jurisdiction in view of the pleadings and the coming into effect of the Environment and Land Court Act No. 19 of 2011.

For the reasons above, I have decided not to write any ruling in respect of the application dated 21st January, 2019 and the court shall proceed to give directions to both parties on the way forward. No order as to costs.

Dated and delivered at Nairobi this 25th day of February, 2021.

A.MBOGHOLI MSAGHA

JUDGE