



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION

CIVIL CASE NO. 329 OF 2017

R.A.K. CERAMICS KENYA LTD..... PLAINTIFF

VERSUS

R.A.K CERAMICS & SANITARY WARE LTD.....1ST DEFENDANT

REGISTRAR OF COMPANIES.....2ND DEFENDANT

RULING

1. The matter came up for hearing of Notice to Show Cause why it should not be dismissed for want of prosecution. The Notice requiring the parties to attend court was served by the Registry.
2. Counsel for the Plaintiff in response to the Notice filed an affidavit sworn by Gordon Ogado, counsel for the Plaintiff on 12th November, 2021 explaining the circumstances why the matter should not be dismissed. They are that the suit was set down for hearing on 3rd February, 2020 but that the court was not sitting on this day. Another hearing date was set for 19th February, 2020 but the matter was not listed.
3. Counsel added that, after the onset of Covid – 19 Pandemic in Kenya, the Hon. Chief Justice gave directions closing down all courts, which action had the effect of suspending all appearances and hearings in the Division. That it also took time before the fixing of hearing dates online became effective.
4. That the delay therefore, in fixing the matter for hearing was occasioned by the onset of the Covid – 19 Pandemic.
5. It was the submission of the Plaintiff Counsel that the Plaintiff was eager to prosecute the matter to its conclusion and pleaded with the court not to dismiss it.
6. On behalf of the Defendant was Learned Counsel Mr. Mutua who submitted that the Covid – 19 Pandemic should not attach as an excuse of not prosecuting the suit. He reasoned that the Hon. Chief Justice had given directions how matters would be fixed for hearing and subsequently heard online. He however urged the court to issue any directions it deemed fit and just in the circumstances of the case.
7. I have perused the court record. I have confirmed that the matter had generally not been active. It was in court for Case Management Conference (CMC) on 22/9/2017, 8/12/2018, 19/1/2018, 2/2/2017, 27/4/2018, 1/7/2018, 16/7/2018 and 18/9/2018. It was also referred for Case Management Conference on 3/12/2020 but nothing appears to have been recorded. The latter date is the date counsel for the Plaintiff alludes was a date set for hearing which is not true. Nothing else appears to have taken place as the next thing is that the court served the instant Notice to Show Cause, the stage at which I took over the conduct of the matter.
8. From the above chronology, it is clear that both parties have not taken Case Management Conference seriously. It is deemed that a party files a suit when they are ready to prosecute the claim. The Plaintiff's indolence is clear on the face of it and ought not to be further tolerated.
9. In view that a dismissal of a suit ought to be undertaken as a last resort as interests of justice tilt towards according a party an opportunity to ventilate its case, I shall grant the Plaintiff the chance to prosecute the matter. This must be taken seriously failing which the court will not hesitate to dismiss the suit for want of prosecution.
10. I accordingly dismiss the Notice to Show Cause Notice. I direct that parties must comply with the Case Management Conference within

45 days. Mention on 12/7/2021 before the Hon. Deputy Registrar to confirm compliance. Mention on 27/7/2021 before the court to take a hearing date.

DATED AND DELIVERED AT NAIROBI THIS 26TH MAY, 2021

G. W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Mr. Mutua for the 1st Defendant*
2. *No appearance for Ogado for the Plaintiff*
3. *No appearance for Odhiambo for the 2nd Defendant (Attorney General)*