



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 160 OF 2014

(FORMERLY HIGH COURT COMMERCIAL CASE NO. 438 OF 2012)

MAYFEEDS KENYA LIMITED.....PLAINTIFF

-VERSUS-

CONSOLIDATED FREIGHT LIMITED.....DEFENDANT

RULING

1. This ruling is premised on the notice to show cause issued in the suit herein on 6th December, 2019 requiring the parties to show cause as to why the suit ought not be dismissed for want of prosecution.
2. In response thereto, *Owen Onyango* advocate for the plaintiff swore a replying affidavit in which he stated that since 12th November, 2012 when the parties were directed to comply with pre-trial directions, the parties have been engaged in out-of-court settlements which eventually fell through.
3. The advocate deponed that thereafter, the plaintiff proceeded to fix the matter for mention for 30th May, 2014 and on which date the suit was certified ready for hearing and the parties directed to obtain hearing dates from the registry.
4. The deponent stated that since then, the court file has been missing from the registry and the plaintiff has been following up on the same.
5. It was the deponent's assertion that the plaintiff is still interested in prosecuting the suit.
6. I have cautiously considered the facts deponed in the affidavit. It is apparent that this suit was first lodged at the High Court Commercial Division under Commercial Case No. 438 of 2012 and that a court order was made on 30th May, 2014 in the presence of the parties' respective advocates directing that the file be transferred to the Civil Division of the High Court for the reason that the claim is in the nature of material damage to a motor vehicle.
7. Since then, it is apparent from the record that there has been no action in the suit. Going by the record, a notice to show cause was previously issued on 31st May, 2019 but owing to the fact that there was no evidence of notice to the plaintiff on the same, the court directed that fresh notices to show cause be issued.
8. I have looked at copies of the correspondences dated 27th March, 2013, 12th April, 2013 and 17th April, 2013 annexed to the affidavit indicating brief negotiations between the parties. I have equally looked at the letter dated 17th April, 2018 and received on 25th April, 2018 addressed to the Deputy Registrar-Commercial and Admiralty Division by the plaintiff's advocate inquiring on the status of the file and further seeking directions on transfer of the court file. There is nothing to indicate whether the said letter elicited a response.
9. From the foregoing, I take the view that while there is no indication that the file was ever missing from the registry, it is plausible the parties were not updated once the file was transferred to the Civil Division and it is also evident that no directions were given thereafter.
10. In the circumstances, I find that it would be in the interest of justice to grant the plaintiff an opportunity to prosecute its case.
11. Consequently, I make an order that the notice to show cause be and is hereby vacated on the condition that the plaintiff prosecutes its case within 120 days from today failing which the suit shall stand dismissed.

Dated, signed and delivered at NAIROBI this 20th day of February, 2020.

.....

L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant