

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 412 OF 2013

PAGE SIGNS & GRAPHICS LIMITED.....PLAINTIFF

VERSUS

SPORTS STADIA MANAGEMENT BOARD.....DEFENDANT

R U L I N G

1. A notice to show cause was issued on 5th February, 2019 requiring the parties herein to show cause as to why the suit should not be dismissed for want of prosecution since it was last in court on 11th October, 2017.
2. When the parties appeared before me on 22nd February, 2019, they had each sought leave to put in a reply to the aforesaid notice to show cause; however, I have only seen the reply filed on behalf of the plaintiff.
3. In the replying affidavit filed on 8th March, 2019, *Antony Maina Macharia*, advocate for the plaintiff, deponed inter alia that when the parties appeared in court on 11th October, 2017 the judge ordered that they comply with pre-trial directions first. The deponent also stated that the defendant only complied with the abovementioned order on 23rd October, 2017 and that the plaintiff's attempts to have the matter fixed for hearing were futile.
4. I have considered the facts deponed to in the replying affidavit; I have also perused the court file and record. It is correct that when the matter was last in court on 11th October, 2017, the judge did order the parties to comply with the provisions of Order 11 of the Civil Procedure Rules.
5. I am able to ascertain that the plaintiff had previously complied with the pre-trial directions though it would appear the defendant only recently filed its witness statement on 23rd October, 2017.
6. In the premises, it is reasonable to state that the delay in the matter has largely been caused by non-compliance on the part of the defendant. Suffice it to say, there is nothing to show that the plaintiff was unable to obtain a hearing date from the registry by virtue of the fact that the court diary was closed or that the same was not possible in view of the last court orders in place.
7. Be that as it may, the court in *Martin Muriuki v Rosemary Kanambiu [2019] eKLR* held that a court ought to approach the dismissal of cases cautiously particularly where sufficient cause has been shown.
8. In the present instance, I find that the plaintiff has on previous occasions taken reasonable steps to prosecute the suit and the delay resulted largely from the defendant's non-compliance in filing all its pre-trial documents timeously. I am therefore satisfied that sufficient reason has been given.
9. Consequently, the plaintiff is ordered to prosecute its suit within 120 days from today failing which the same shall stand dismissed.

Dated, signed and delivered at **NAIROBI** this 28th day of March, 2019

L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant