

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 292 OF 2014

BIDCO OIL REFINERIES LIMITEDPLAINTIFF

VERSUS

AHMED ABDIKADIR AHMED

T/A SAKINA DISTRIBUTORS.....1ST DEFENDANT

MUTURI KENNEDY MWANGI.....2ND DEFENDANT

NKABU PHARIS KIRIMI3RD DEFENDANT

RULING

This ruling relates to an application filed by the 3rd defendant by way of Notice of Motion under Order 17 Rule 2 (1) and (3) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking an Order that the plaintiff's suit be dismissed for want of prosecution.

The grounds set out on the face of the application allege that no steps have been taken to list matter for hearing for over two years to the prejudice of the 3rd defendant. This is said to be an abuse of the court process.

There is a supporting affidavit sworn by the advocate for the 3rd defendant. There is another application filed by the plaintiff dated 14th December and filed on 19th December, 2016 seeking to strike out the defence of the 3rd defendant and enter judgment in his favour. The submissions on record relate to the application by the 3rd defendant to strike out the plaintiff's suit.

I have gone through the record to see the application of Order 17 rule 2 (1) and (3) of the Civil Procedure Rules which have been cited by the 3rd defendant. The wording of rule 2 (1) are instructive. For purposes of record the opening sentence reads as follows,

“In any suit in which no application has been made or step taken by either party for one year.....”.

The foregoing is the condition precedent before application under the said provisions can be filed. Before the application by the 3rd defendant was filed on 1st of September, the plaintiff filed a request for judgment dated 5th August, 2016 against the 1st and 2nd defendants. My interpretation of the applicable provisions is that, that was an “application” or “step taken by” the plaintiff under rule 2(1) aforesaid. The application by the 3RD defendant was filed 25 days or thereabout from the step taken by the plaintiff.

The record shows that the minute for the Deputy Registrar's action following the request for judgment by the plaintiff was made on 16th August, 2016. The Deputy Registrar signed the judgment on 17th August, 2016.

The application by the 3rd defendant to strike out the plaintiff's suit is premature and does not call for the court to address the merits or otherwise as set out in the several decided cases cited by the parties. The application is therefore dismissed with costs to the plaintiff.

Dated, signed and delivered at Nairobi this 14th Day of March, 2019.

A. MBOGHOLI MSAGHA

JUDGE