



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

HCCC NO. 607 OF 2014

RAFIKI MICROFINANCE BANK LIMITED.....PLAINTIFF

VERSUS

ZENITH PHARMACEUTICALS LIMITED.....DEFENDANT

RULING

1. This ruling is in respect to a Notice to Show Cause issued by this Court on 20th September 2018.
2. The Court has considered the affidavits sworn in support and against the Notice. The Court has also read the submissions by Counsel.
3. The Court will permit the suit to survive the Notice to Show Cause. This is my reason.
4. Prior to the Notice, the last activity in the file was on 15th July 2017 when this Court delivered a Ruling. So, between the Ruling date and the date of the Notice to Show Cause, the lapse was about 15 months. While the time of inactivity is undoubtedly long, it is just three months outside the red line set by order 17 Rule 2(1) which reads:-

[Order 17, rule 2] Notice to show cause why suit should not be dismissed.

2. (1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.

5. Striking out of the suit is a drastic order. For the fact that the delay is not way outside the 12 months prescribed by law and that these dismissal proceedings were prompted by the Court and not on the application of the Defendant, I will not dismiss the suit for want of prosecution.

6. But there will be conditions attached to this decision:-

- a) The Plaintiffs shall within 30 days hereof prepare the suit for trial and move Court for case management conference.
- b) In computing time in (a) above regard shall be made to the provisions of Order 50 Rule 4 of the Civil Procedure Rules.
- c) In default of (a) above the suit shall stand dismissed without need for a further Court order.
- d) Costs of the Notice to Show Cause proceedings shall be to the Defendant in any event.

Dated, Signed and Delivered in Court at Nairobi this 20th Day of December 2019.

F. TUIYOTT

JUDGE

PRESENT:

Thiongo for the Plaintiff

No appearance for Defendant

Court Assistant: Nixon