



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

CIVIL SUIT NO.102 OF 2013

BELL ATLANTIC COMMUNICATIONS LIMITED.....PLAINTIFF

VERSUS

ECOBANK KENYA LIMITED.....DEFENDANT

AND

PENNINAH WANJIKU MWANGI.....INTERESTED PARTY

RULING

[1] This Ruling is in respect of the Defendant's Notice of Motion dated **24 November 2017**. The application was filed under Sections **1A and 3A** of the **Civil Procedure Act, Chapter 21** of the **Laws of Kenya**, and **Order 17 Rule 2(1) and (3)** of the **Civil Procedure Rules, 2010** and the inherent powers of the Court, for orders that this suit be dismissed for want of prosecution and that the costs of the application be borne by the Plaintiff. It was predicated on the grounds that the Plaintiff has failed and/or neglected to take steps to prosecute this matter since its filing; and that close to 16 months have lapsed since the matter was last in Court.

[2] The application was supported by the affidavit sworn on **24 November 2017** by Advocate **Steve Luseno**, annexed thereto, wherein it was deponed that the suit was last in court on **1 July 2016** when the Court delivered a Ruling declining to strike out the same for failure to serve Summons to Enter Appearance; and that even after being granted an opportunity to take steps in the matter, the Plaintiff had, since the delivery of the Ruling, not taken out Summons to Enter Appearance or any steps to prosecute the matter. He further averred that, in any event, with the sale and transfer of the charged property to the Interested Party, **Penina Wanjiku**, the suit has been overtaken by events; and therefore that it would be in the interest of justice that this suit be dismissed for want of prosecution.

[3] The application was duly served on the Plaintiff and **Mr. Kinyanjui**, the Plaintiff's erstwhile Advocate attended court on **7 March 2018** ready to make his submissions in opposition to the application. However, the Plaintiff had, by then, instructed **Mr. Kimani** to take over the matter from **Mr. Kinyanjui**. Thus, as no Notice of Change of Advocates had been filed, the Plaintiff was accorded time till **14 March 2018** to put its house in order; and although the Notice of Change of Advocates was duly filed on **8 March 2018** by the firm of **George N. Kimani & Co. Advocates**, no response to the application

had been made by **14 March 2018**. That notwithstanding, the Plaintiff was, on **14 March 2018**, granted further time up to file a response to the application dated **24 November 2018**, whose hearing was then fixed for **16 April 2018**. Ultimately, no response was filed.

[4] It is clear from the record that, since the Ruling of the Court dated **1 July 2016**, not steps have been taken by the Plaintiff to progress this matter; such that by **24 November 2017** when the instant application was filed a period of 16 months had already passed. In the circumstances, the case would be ripe for dismissal under **Order 17 Rule 2 of the Civil Procedure Rules**, which stipulates thus:

(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 should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.

(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit;

(3) Any party to the suit may apply for its dismissal as provided in sub-rule (1);

(4) The Court may dismiss the suit for non-compliance with any direction given under this order.

[5] Accordingly, granted that no action has been taken in the matter by the Plaintiff for over one year since the Ruling of **1 July 2016**, and, Defendant having moved the Court for dismissal pursuant to **Sub-rules (1) and (3)** above, it was up to the Plaintiff to show cause why the suit should not be dismissed as prayed by the Defendant. No such cause has been shown as no effort, at all, was made to resist or respond to the application for dismissal. In the premises, I would allow the Defendant's Notice of Motion dated **24 November 2018** and grant orders as hereunder:

[a] That this suit be and is hereby dismissed for want of prosecution as prayed;

[b] That the costs of the suit and the application be borne by the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF APRIL, 2018

OLGA SEWE

JUDGE