

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 92 OF 2016

ABERDARE STEEL & HARDWARE LIMITED.....PLAINTIFF

- VERSUS -

CO-OPERATIVE BANK OF KENYA.....DEFENDANT

RULING

1. The plaintiff filed this suit on **24th March, 2016** seeking injunction to restrain the defendant from exercising its statutory power of sale over the plaintiff's property **LR No. 14870/263** Nairobi. The plaintiff simultaneously whilst filing the plaint also filed a Notice of Motion application dated **23rd March, 2016**. That Notice of Motion was dismissed on **25th April, 2016** for non attendance of the plaintiff's learned counsel.
2. The defendant has moved this court by a notice of motion application dated **4th July 2017** seeking dismissal of this suit for want of prosecution.
3. Although the plaintiff was served with the notice of motion through its learned counsel Sospeter & Co. Advocates, the said counsel failed to attend court on **11th July, 2018** when the matter was entertained. In effect the notice of motion was not opposed by the plaintiff.
4. **Order 17 Rule 1 (2) of the Civil Procedure Rules** (the rules) is in this case satisfied because it is now more than one year since the plaintiff took any step in this matter. Accordingly, this suit will be dismissed for want of prosecution as provided under that Rule.
5. It is also important to note that the plaintiff todate has not filed the summons as required under Order 5 Rule 1 (3) of the Rules. That Rule provides that summons shall accompany a copy of the plaint.
6. The plaint in this matter, bearing in mind Order 5 Rule 1 (3) of the rules, is irregular and should be struck out.
7. In the end, this suit is dismissed for want of prosecution and for being irregular and in contravention of Order 5 Rule 1 (3) of the rules. The defendant is awarded costs of the suit and cost of the Notice of Motion dated 4th July, 2017.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of July 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant