



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 267 OF 2008

KAMCONSULT LIMITED.....PLAINTIFF

VERSUS

NDUNGU NJOROGE & KWACH ADVOCATES.....RESPONDENT

Consolidated with

(HIGH COURT CIVIL CASE NO. 268 OF 2008)

RULING

1. The application dated 22nd September, 2015 seeks orders that:

- 1. The ex parte dismissal of the Plaintiffs suit on 9th April, 2015 be reviewed and set aside**
- 2. The suit be reinstated and set down for the hearing forthwith.**
- 3. Costs be in the cause.**

2. It is stated in the grounds and the affidavit in support of the application that by the time the suit herein was dismissed, the Applicant had on numerous dates taken steps to prosecute the suit. The delay in prosecuting the suit is blamed on the delay in arranging the files in the registry following the re-location of the High Court from the Central Business District to the current location in Milimani. The Applicant expressed shock at the dismissal of the suit and stated that the file has not been dormant for more than one year.

3. The application is opposed. In the replying affidavit, the Respondent gave a chronology of the steps taken herein and stated that there is no letter to the Deputy Registrar to demonstrate that the court file was missing. That there are no grounds to warrant a review of the orders herein. That in any event, the Applicant ought to have been aware that the matter had been listed for dismissal.

4. The Applicant filed a further affidavit and reiterated that the court file was not available to their side. It is stated that it appears that the Respondent had access to the court file and that the dismissal notice was not served on the Applicant.

5. The application was canvassed by way of written submissions. I have considered the said submissions.

6. Order 17 rule 2 Notice to show cause why suit should not be dismissed.

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.

7. The Applicant has demonstrated through affidavit evidence that numerous steps were taken to prosecute this suit. The said steps include invitations for the fixing of hearing dates and letters to the Deputy Registrar. However, the court record reflects no single court appearance

since the filing of the suit. There is also no evidence of service of the dismissal Notice.

8. Consequently, I allow application. Parties to exchange documents and to comply with pre-trial procedures. The Applicant to take a date for directions within 90 days from date hereof. In default the suit to stand dismissed.

Date, signed and delivered at Nairobi this 26th day of Sept, 2018

B. THURANIRA JADEN

JUDGE