



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO.454 OF 2007

BENJAMIN KIMANI WARUHIU.....1ST PLAINTIFF

DULEXE PRINTERS LIMITED.....2ND PLAINTIFF

VERSUS

BARCLAYS BANK OF KENYA LIMITED.....DEFENDANT

RULING

1. The Notice of Motion dated **31st May, 2018** is filed by the defendant. At the time I am preparing this Ruling there is no replying affidavit by the plaintiff to oppose the application.
2. The Notice of Motion is brought under Order 17 Rule 2 of the Civil Procedure Rules. It is for the prayer for the dismissal of this suit for want of prosecution.
3. The uncontroverted facts in support of that application is that this suit was filed in **2007** on **11th December, 2007**. The plaintiffs obtained an interim interlocutory injunction restraining the defendant from realising its security through a public auction. The defendant subsequently set a date of the sale of its security, the plaintiffs' immovable property, but once again an interim injunction was granted to the plaintiff on **21st April, 2008**.
4. The plaintiff's further attempt to reinstate the interim injunction failed on **20th September, 2009** when this court dismissed their application.
5. The defendant exercised its statutory power of sale and sold the security on **18th August, 2011**.
6. That since the plaintiff's changed their advocates in **September, 2015** there has not been any prosecution of this suit.
7. **Order 17 Rule 2 of the Civil Procedure Rules** gives power to this court to dismiss a suit for want of prosecution where no cause is shown. The plaintiff did not respond to the application. A case in point is; **Empress Dawdger Company Ltd Vs. Kenya Cultural Centre**, Civil Suit No.670 of 2001. In this case, **Justice Ringera**, as he then was, quoted from a passage of Halsbury's Laws of England, 4th Edition as follows;

“The power to dismiss an action for want of prosecution, without giving the plaintiff the opportunity to remedy his default, will not be exercised unless the court is satisfied: (1) that the default has been intentional and contumelious, or (2) that there has been prolonged or inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause to or to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between each other or between them and third parties....”

8. Having found that the plaintiff has failed to show cause why this should not be dismissed **this suit is hereby dismissed for want of prosecution.** The **defendant is awarded the costs of the suit** and of the Notice of Motion dated **31st May, 2018.**

DATED, SIGNED and DELIVERED at **NAIROBI** this **29th** day of **November, 2018.**

MARY KASANGO

JUDGE

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

Court Assistant.....Sophie

..... for the Plaintiffs

..... for the Defendant

MARY KASANGO

JUDGE