



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 521 OF 2015

DELUXE TRADING COMPANY LIMITED.....PLAINTIFF

- VERSUS -

MAXWELL AFRICA LIMITED.....1ST DEFENDANT

ANTI-COUNTERFEIT AGENCY.....2ND DEFENDANT

RULING

1. This ruling relates to the notice to show cause why this suit should not be dismissed for want of prosecution, which notice was served upon the parties in this matter at the court's own motion.

BACKGROUND

2. The plaintiff filed this suit, by way of a plaint, on **9th October, 2015**. The plaintiff simultaneously on filing this suit filed a Notice of Motion dated **9th October 2015**.

3. The 1st defendant in response to this suit filed a Memorandum of Appearance, in court, on **16th October, 2015**. The 1st defendant has to date not filed a defence. There is no evidence of service of the summons upon the 2nd defendant in the court file.

4. A ruling on a preliminary objection was delivered on **13th November 2015** when the plaintiff's suit was found to be competently filed. Thereafter the matter was mentioned on **9th October** and **19th October 2015**. There was no prosecution of this suit thereafter. No dates were taken by the plaintiff after that date.

PLAINTIFF'S RESPONSE TO NOTICE TO SHOW CAUSE

5. The plaintiff by an affidavit sworn by **Vishal Barot**, who described himself as a director of the plaintiff company deponed that he and his unnamed brother were the sole directors of the plaintiff company. That he, **Vishal Barot**, had to attend to his sick mother, who had travelled to India from **May 2017** to **July 2018**. The deponent stated in his affidavit that he was desirous with proceeding with this case.

DETERMINATION

6. The plaintiff has not shown satisfactory cause why this suit should not be dismissed.

7. The last action in this matter was on **19th October 2015**. Thereafter the suit went to '**sleep**'. Even though the plaintiff's director attempted to explain the lack of activity between 2017 and 2018 that explanation was not supported with any documentation such as airport exit stamp, or medical report of that director's mother.

8. It needs to be noted that the plaintiff's case, at the stage at which it was at, did not need the attendance of the plaintiff's director. It was largely at the stage where the plaintiff's learned counsel needed to move the court, either by seeking judgment against the defendants who had not filed the Memorandum of Appearance and defence within the prescribed period. If such documents had been filed, although it is not evidence on the file they were filed, then it was for the plaintiff's learned counsel to set the suit for case management conference. None of these were done. As I said before the suit went to '**sleep**' on **19th October 2015**.

9. It is because of the above that I find the plaintiff has failed to take any step, in this matter, within one year, indeed now for 3 years, and the

plaintiff has not shown, to the court's satisfaction, cause why this suit should not be dismissed.

10. In the end therefore, this suit is hereby dismissed for want of prosecution. This file shall henceforth be closed.

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 Plaintiff

..... for the Defendants

MARY KASANGO

JUDGE