

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 636 OF 2006

LENANA MOUNT HOTEL LIMITED.....PLAINTIFF

VERSUS

KENYA AIRWAYS LIMITED.....DEFENDANT

RULING

1. The progress in the prosecution of this case has unfortunately been hampered by circumstances that beyond the control of the plaintiff.
2. The suit was filed by the plaintiff on **21st November 2006**. By **30th January 2007** pleadings had closed.
3. By notice to show cause dated **9th November 2018** the plaintiff was called upon to show cause why this suit should not be dismissed for want of prosecution.
4. This is what the Court was informed, by the plaintiff, in response to that notice to show cause. The plaintiffs' former advocate seemed to have lost interest in this matter. The plaintiff therefore instructed its present advocate to take over the conduct this case. The former advocate filed an advocate/client bill of costs. After taxation and after the former advocate was paid the taxed costs he failed to release 12 boxes of documents which the plaintiff requires to prove this case. As a consequence the plaintiff sued its former advocate in Commercial and Admiralty Division, Nairobi Misc case No.719 of 2011. Judgment was entered for the plaintiff, in that suit, for the release of the boxes of plaintiff's documents. That the former advocate being aggrieved with that judgment filed an appeal before the Court of appeal, which appeal is yet to be heard. The plaintiff therefore stated that it has been unable to fix this case for hearing because of lack of documents necessary to prove its case.
5. This Court appreciates that the plaintiff has been put in that difficult circumstance. This court however notes that the former advocate in the aforesaid suit stated in evidence that he did not have in his possession, those documents. One therefore wonders what will be the fate of this case if the plaintiff does not get its documents. This case cannot continue to be in Limbo forever. It needs to be prosecuted.
6. It is because of the above and more particularly because the plaintiff's former advocate does not have the documents of the plaintiff that this Court give the plaintiff 7 days within which to decide whether it shall proceed in the absence of the documents. If not this case shall be dismissed for want of prosecution. At the reading of this Ruling a date will be given for the plaintiff to state whether it shall proceed without the documents or not.

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 Defendant

MARY KASANGO

JUDGE