



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. 47 OF 2014

DIOCESE OF KITUI REGISTERED TRUSTEES.....PLAINTIFF

VERSUS

TIMOTHY KARUNGU KARANJA.....1ST DEFENDANT

DRY ASSOCIATES LIMITED.....2ND DEFENDANT

CAR AND GENERAL (K) LIMITED.....3RD DEFENDANT

MERIDAS CAPITAL LIMITED.....4TH DEFENDANT

INVESTMENT HOUSE LIMITED.....5TH DEFENDANT

RULING NO.2

1. The 2nd Defendant has asked the court to dismiss the plaintiff's suit for want of prosecution.
2. In the alternative, the 2nd Defendant asked the court to strike out the Amended Plaintiff which was filed on 25th April 2017, on the grounds that the said Amended Plaintiff was filed out of time.
3. It is common ground that on 25th April 2017 the Amended Plaintiff was filed in court.
4. The Amended Plaintiff was filed consequent upon a consent order recorded in court on 29th September 2015.
5. Pursuant to the provisions of Order 8 Rule 6 of the Civil Procedure Rules;

“Where the court has made an order giving any party leave to amend, unless that party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the court to extend the period”.

6. When the court allows a party to amend a pleading, the court may specify the period within which the amendment is to be effected.
7. However, in the event that the court did not specify the period within which the amendment is to be

effected, the rule stipulates that the amendment be effected within 14 days from the date when the order was made.

8. The period between 29th September 2015 and 25th April 2017 is definitely well over 14 days. Therefore, unless the plaintiff demonstrated to the court that the court had given it that much time within which to amend the Plaintiff, it follows that the amendment was filed well out of time.

9. It would therefore follow that by the time when the Plaintiff was being amended, the order which had allowed the amendment to be effected, had ceased to have effect.

10. Therefore, the Amended Plaintiff was filed without the leave of the court.

11. Accordingly, as the plaintiff had not obtained the extension of time within which to amend the Plaintiff, the Amended Plaintiff cannot be allowed to remain on record. It is therefore struck out.

12. Meanwhile, as the Amended Plaintiff was filed in court on 25th April 2017, and as it was served upon the applicant on 26th April 2017, it follows that a period of one year had not yet lapsed by the 4th of May 2017, when the applicant moved the court to dismiss the suit for want of prosecution.

13. In the event the application failed to meet the requirements of Order 17 Rule 2 (1) of the Civil Procedure Rules.

14. I therefore reject the application seeking the dismissal of the suit for want of prosecution.

15. As the application dated 4th May 2017 is partially successful, I order the plaintiff to pay the costs thereof to the applicant.

DATED, SIGNED and DELIVERED at NAIROBI this 13th day of December 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Mrs. Koech for the Plaintiff

No appearance for the 1st Defendant

Mueke for the 2nd Defendant

Miss Matata for Kabora for the 3rd Defendant

No appearance for the 4th Defendant

No appearance for the 5th Defendant

Collins Odhiambo – Court clerk.