



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 792 OF 2003
BUBAL CORPORATION (suing as a firm).....PLAINTIFF
VERSUS
SOS-KINDERDORF INTERNATIONAL.....DEFENDANT
J U D G E M E N T

1. By a **Notice of Motion** dated **5th October 2015** the Plaintiff seeks the following orders:-

- a. *That this Honorable court be pleased to review and/or set aside and/or vacate the orders issued on 16th June 2015 and all consequential orders.*
- b. *That this Honorable court be pleased to discharge the Orders issued on 16th June 201 and all consequential orders.*

2. The application is premised on the ground set out therein and by affidavit sworn by **Cohen Amany** on **5th October 2015**.

3. The brief history of the application is that on 6th June 2015 this court, under Order 17 Rule R of the civil Procedure Rules dismissed the suit herein, causing the Plaintiff to bring this application for its reinstatement, citing lack of notice before the said dismissed was effected.

4. The Defendant has in opposition to the application, filed Grounds of Opposition on 30th October 2015 stating that the application is an abuse of the court process and that the Plaintiff had failed to comply with previous court orders of 15th December 2006 and 27th July 2014, and that the Plaintiff's dilatoriness shown herein is unconscionable.

5. I have considered the application and the oral submission of counsel. For me the only issue for determination is whether or not the Plaintiff was given notice that the suit would be dismissed on 16th June 2015 for want of prosecution. In my view, it does not matter that in previous occasions the Plaintiff had failed to comply with certain orders of this court. The truth of the matter, which is also the law, is that any party whose suit is to be dismissed for want of prosecution must properly be notified of the same. Failure to issue a notice of the intention to dismiss is a serious and fundamental flaw which must be rectified by the court. I have carefully perused the court file, and there is no evidence that the Plaintiff was served with such a notice by the court. The Plaintiff's counsel, Mr. Cohen also submitted that they were not served with such a notice. Indeed, even the Defendant's counsel Mr. Jelle admitted that the Defendant did not receive the Notice that the suit would be dismissed for want of prosecution.

6. This court having as a matter of fact ascertained that indeed the Plaintiff was not given the said notice,

the court has no business looking for other grounds upon which this application can be dismissed. On the ground of the failure to give the said notice for intended dismissal of this suit, the application must succeed.

7. In the upshot, the application dated 5th October 2015 by the Plaintiffs is allowed as prayed with costs in the cause.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 23RD DAY OF NOVEMBER 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Cohen for the Plaintiff

No appearance for the Defendant

Teresia – Court Clerk