



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CIVIL SUIT NO.10 OF 2001

KENYA COMMERCIAL BANK OF KENYA - PLAINTIFF/RESPONDENT

VERSUS

SIMEON CHERUIYOT LANGAT - DEFENDANT/APPLICANT

RULING

Kenya Commercial Bank Ltd, the Plaintiff herein filed the Plaint dated 1st February 2001 in which it sought for judgment against Simeon Cheruiyot Langat, the Defendant herein, in the following terms:

- a. The sum of Ksh.564,948.40 due as aforesaid with Bank charges and interest at the rate of interest calculated on daily balances at monthly rests, until payment in full.
- b. Costs of an incidental to this suit and interest thereon at the Court rate.
- c. Any other further relief this Honourable Court may deem fit just to grant.

The Defendant filed a defense dated 14th March 2001 to oppose the Plaintiff's suit. The suit is yet to be heard, thirteen (13) years down the line.

The Defendant has now taken out the Motion dated 8th March 2011 in which he sought for the following orders:

- a. THAT this Honourable court may be pleased to dismiss this suit for want of prosecution.
- b. THAT costs of this Application be provided for.

The Plaintiff filed the replying affidavit of Fred Ntabo Orora to oppose the Motion. When the Motion came up for hearing, learned counsels appearing in the matter recorded a consent order to have the Motion disposed of by written submissions. At the time of writing this ruling both parties had filed their submissions.

I have considered the grounds set out on the face of the Motion and the facts deponed in the rival affidavits. I have also taken into account the rival written submissions. It is the submission of the Defendant that this case was listed for hearing on 28th September 2009 and the Plaintiff has not taken any step to prosecute the case. The Defendant urged this court to find that the Plaintiff has lost interest in pursuing the case. In his affidavit sworn on 8th March 2011, the Defendant's advocate avers that

litigation must come to an end hence the suit should be dismissed for want of prosecution. In the replying affidavit sworn by Fred Ntabo Orora, the Plaintiff gave a detailed explanation as to why there was a considerable delay in fixing the case for hearing. The main reason advanced is that it took time for the Plaintiff to ascertain the authenticity of the documents supplied by the Defendant in his defence. The document in question was the discharge of charge. The Plaintiff admitted that there was a delay but the same was not inordinate. The Plaintiff further stated that the suit raises serious triable issues and particularly the question as to whether or not the Defendant had paid the outstanding loan in full. The court exercises a discretionary power when dealing with such an application. The court will not exercise its discretion to aid a party who has deliberately sought to delay by its action or in action to obstruct or block the course of justice. This suit was filed in the year 2001. The same was fixed for hearing on 28th September 2009. Since then, no attempt has been made by the Plaintiff to list the case for hearing. I find the reasons given by the Plaintiff that delayed the prosecution of this case not plausible. The reasons advanced by the Plaintiff do not appeal to this court. It is clear from the record that there has been a delay of more than 5 years since the last time the case was before court for hearing. It is not therefore correct to state that the delay was not inordinate. I find the delay to be inexcusable and inordinate. I find the Defendant's Motion dated 8th March 2011 to be well founded. The same is allowed as prayed.

Dated, signed and delivered in open court at Kericho this 30th day of May, 2014

J. K. SERGON

JUDGE

In the presence of:

- Mr. Orora for Plaintiff
- Koko holding brief for Defendant