

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 8 OF 2009

DAVID MUTHAMI MUTHEE ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

AFRCIA MERCHANT ASSURANCE CO. LTD. ::::::::::::::: DEFENDANT

R U L I N G

1. Before the court is a response to the Notice to Show Cause dated 6th May 2014. The said Notice to Show Cause was issued by the court to enable parties show cause why this suit should not be dismissed for want of prosecution under Order 17 Rule 2 of the Civil Procedure Rules 2010.
2. The Plaintiff has now filed an affidavit in this court on 16th May 2014 in which the Plaintiff provides reasons for the said delay. Before the suit could be listed for hearing, an application was made to stay proceedings pending arbitration. A Ruling was made on 8th June 2009 allowing the matter to proceed to arbitration.
3. A Ruling was made by the Arbitrator but the Applicant was not satisfied with the Ruling and sought to appeal to the High Court to set aside the arbitral award. Soon thereafter the court file went missing and was only recently recovered and hence the delay.
4. The Plaintiff states that he is still desirous of proceeding with the matter and pleads with this court for leave to continue with the matter. In fact, the Plaintiff states that the said Notice to Show Cause helped them by producing the court file which had been misplaced.
5. I have considered the affidavit of the Plaintiff in response to the said Notice to Show Cause. I am satisfied that there is good explanation for the delay. The suit will not be dismissed, but the Plaintiff must proceed and file the intended application within 21 days from the date of this Ruling.
6. This matter will be **mentioned** on **17th June 2014** to see how far the Plaintiff has proceeded in this matter.

DATED, READ AND DELIVERED AT NAIROBI THIS 27TH DAY OF MAY 2014

E. K. O. OGOLA

JUDGE

PRESENT:

Ndegwa holding brief for Gachie for Plaintiff

No appearance for Defendant

Teresia – Court Clerk