



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 578 OF 2009

CHARLES ONYANGO ANGUKA AND

GERPHAS OBONYO training as

JOPIJU ELECTRICAL AND GENERAL WORKS.....PLAINTIFF/RESPONDENT

- VERSUS -

EQUITY BANK LIMITED.....DEFENDANT/APPLICANT

ELISHA OCHIENG OMBERE training as

JUPIJU ELECTRICAL SERVICES CONTRACTOR.....THIRD PARTY

R U L I N G

1. The application before the court is Notice of Motion dated **2nd September 2014** filed under Order 17 Rule 2 (3) and Order 51, Rule 1 of the Civil Procedure Rules. The applications seeks the following orders:-

1. That this suit be dismissed with costs for want of prosecution.

2. That costs be awarded to the Defendant/Applicant

2. The application is premised on the grounds set out therein namely:-

1. The matter was last in court on 16th October 2012 (more than one and a half years from date of fixing) when the matter came up for hearing however the court noted that the Defendant's advocate was indisposed and adjourned the matter.

2. The Plaintiff/Respondent has since then never taken any steps to invite us to take another hearing date or informed us on whether a hearing date was taken or even to agree with the same on when a hearing date is convenient for the parties.

3. The application is supported by affidavit of **Florence Njuguna** dated **2nd September 2014**. The affidavit mainly expands on the above grounds.

4. The application is supported by the 3rd party vide their Notice to the effect dated 24th September 2014 and file in court on 8th October 2014.

5. The Plaintiff however, has opposed the application vide a Replying Affidavit sworn on 1st October 2014 in which the Plaintiff states that the Defendant had not complied with pre-trial directions. In reply to this allegation the Defendant/Applicant submitted that they had not complied with Order 11 because there was a pending application by the Defendant.

6. I have considered the application and submission by the parties. It is noted that all the parties except the Defendant appear

to have complied with Order 11. It is also noted that on 16th October 2012 this matter came up for hearing. The Plaintiff's counsel Mr. Arwa, was ready to proceed to hearing but the Defendant counsel M/s Ratemo was said to be sick and on that account the matter was adjourned. It is therefore not entirely correct to blame the Plaintiff for the delay in the prosecution of this matter. The Defendant caused the adjournment. The Defendant also has not complied with Order 11.

7. In the upshot I make the following orders:-

a. The Defendant's application dated 2nd September 2014 is hereby dismissed.

b. The Defendant, and any other party wishing to file any further documents must do so within 30 days from today.

c. Matter to be mentioned on 16th December 2014 for compliance.

d. Costs in the cause.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 31ST DAY OF OCTOBER 2014

E. K. O. OGOLA

JUDGE

PRESENT:

M/s Kirui holding brief for Arwa for the Plaintiff/ Respondents

M/s Nungo holding brief for M/s Ndirangu for the Defendants/Applicant

M/s Kageni holding brief for Okeyo for the Interested Party

Irene – Court Clerk