



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 435 of 2011

WOG TECHNOLOGIES (P) LIMITED.....PLAINTIFF

VERSUS

AGRO CHEMICAL AND FOOD COMPANY LIMITED.....DEFENDANT

RULING

1. In a ruling dated and delivered on 8<sup>th</sup> March 2012 upon an application by the defendant for security for its costs of the suit, the court (Khaminwa, J) allowed the application and ordered the Plaintiff to deposit KShs 5,000,000/00 into a joint interest-earning account in the names of both parties' respective advocates in a reputable Kenyan Bank within 30 days of delivery of the ruling, **“failing which (the) suit shall stand dismissed”**.
2. As it happened, the Plaintiff made no such deposit. By operation of the aforesaid order of 8<sup>th</sup> March 2012 the suit stood dismissed on 8<sup>th</sup> April 2012. To remove any doubt, the Plaintiff sought and obtained on 25<sup>th</sup> April 2012 an order formally dismissing the suit for failure to comply with the order of 8<sup>th</sup> March 2012.
3. In the meantime the Plaintiff had filed on the 19<sup>th</sup> April 2012 an application by notice of motion dated 17<sup>th</sup> April 2012 seeking the main order of stay of the order of 8<sup>th</sup> March 2012 and all subsequent proceedings pending hearing and determination of an intended appeal against that order. Needless to say, that application was academic in view of the wording of the default clause of the order of 8<sup>th</sup> March 2012.
4. Three months later the Plaintiff applied by **notice of motion dated 17<sup>th</sup> July 2012** seeking the main order that the order of formal dismissal of the suit of 25<sup>th</sup> April 2012 be set aside and the suit be reinstated. There is an additional prayer for the Plaintiff's application by notice of motion dated 17/4/2012 (for extension of time within which to deposit the security) be set down for hearing on merit. That application of 17<sup>th</sup> July 2012 is the subject of this ruling.
5. I have considered the submissions of the learned counsels appearing. I have also perused the court file and have noted the exact wording of the order of 8<sup>th</sup> March 2012. That order provided in effect that the suit would stand automatically dismissed in the event of the Plaintiff failing to deposit the security of KShs 5,000,000/00 within 30 days from 8<sup>th</sup> March 2012. So, upon realizing that it would not be able to make the deposit as ordered, and wishing to seek for enlargement of the 30 days within which to make the deposit, it was incumbent upon the Plaintiff to apply for such enlargement of time **before expiry** of the 30 days.
6. The Plaintiff did not apply for enlargement of time until it filed its notice of motion dated 17<sup>th</sup> April 2012 on 19<sup>th</sup> April 2012. By that time, by operation of the order of 8<sup>th</sup> March 2012 the suit stood dismissed. The order of 25<sup>th</sup> April 2012 formally dismissing the suit did not alter the fact that the suit already stood dismissed on or about 8<sup>th</sup> April 2012. The said order of 25<sup>th</sup> April 12 was thus unnecessary and superfluous.
7. The Plaintiff was thus in disobedience of the order of the court of 8<sup>th</sup> March 2012. The consequence of

that disobedience was that its suit stood dismissed on or about 8<sup>th</sup> April 2012. As already noted, the Plaintiff ought to have sought enlargement of the time within which to deposit the security ordered before expiry of the 30 days set by the court. It did not.

**8.** The main order sought for setting aside the order of 25<sup>th</sup> April 2012 is in the nature of a review. No proper ground has been advanced upon which the court can properly set aside the dismissal of the suit, which dismissal was the natural consequence of the Plaintiff's own failure to obey the court order. I find no merit in the notice of motion dated 17<sup>th</sup> July 2012. It is dismissed with costs to the Defendant. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JANUARY 2013**