



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Case 447 of 1998

CALEDONIA SUPERMARKET LIMITED.....PLAINTIFF

VERSUS

THE KENYA NATIONAL EXAMINAITONS COUNCIL.....DEFENDANT

R U L I N G

1. Before the court is a **Notice of Motion** dated **10th December 2012** seeking as the main order that the order dismissing the suit made on 27th January 2012 be set aside and the suit be reinstated.
2. The application is based on the grounds that:-
 1. The Court of Appeal in Civil Appeal Number 184 of 1999 has decided the question of liability and the only matter which was pending was the assessment of damages and the parties were negotiating to reach an amicable settlement out of court and the negotiations were still in progress when the suit was dismissed on 27/01/2012.
 2. No Notice as required by Order 17 Rule 2 (1) was ever given by the court to the Plaintiff's advocate.
 3. The application is supported by affidavit of MADAN GEOPAL SHARMA dated 10th December 2012 with its annexures.
 4. The application is not opposed. It was served and an affidavit of service filed in court.
 5. Records show that on 27/1/2012 the suit was dismissed for want of prosecution by Justice Mabeya.
 6. While there is evidence on record that a notice under Order 17 Rule 2 was issued, there is no evidence that the Plaintiff or its advocates received the same.
 7. As it is indicated to me that the parties hereto wish to settle this matter amicably, I am inclined to grant the application.
 8. The Notice of Motion application dated 10th December 2012 is allowed with costs in the cause.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI THIS 26TH DAY OF FEBRUARY 2013

E. K. O. OGOLA

JUDGE

Present:

M.G. Sharmer for Plaintiff

N/A Defendant

Teresia – court clerk