



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY COURTS
CIVIL CASE NO. 499 OF 2009

**LAVENDER OMBIMA (suing as the legal representative of the estate of
NELSON MUCHILWA OMBIMA.....PLAINTIFF**

- VERSUS -

MEIR INTERNATIONAL LIMITED.....1ST DEFENDANT

SAMSON MASABA MUNIKAH T/a MUNIKAH & CO. ADVS...2ND DEFENDANT

DEVELOPMENT BANK OF KENYA LIMITED.....3RD DEFENDANT

ROBERT KINYANJUI KAMAU.....4TH DEFENDANT

RULING

By a Chamber Summons application dated 24th February 2011 brought under Order 17 Rule 2 (1) of the Civil Procedure Rules, 2010 Chapter 21 Laws of Kenya, the Applicant seeks orders namely:-

1) That the Plaint dated 13th July, 2009 in so far as the same relates to the 2nd Defendant be struck out and dismissed with costs.

2) That the costs of the suit and of the application be paid by the Plaintiff.

The application is supported by the grounds on its face viz:-

1. On the 13th of November, 2009 the Honourable Lady Justice Koome dismissed the Plaintiff's application dated the 13th of July 2009.

2. Since the delivery of the ruling in ground 1 hereinabove the Plaintiff has taken no further step to have this suit fixed for hearing or made any other or further application, a period of over one year.

It is also supported by the affidavit of Mr. Samson Masaba Munikah. It is submitted for the Applicant that the Plaintiff does not disclose any cause of action against the 2nd Defendant, and that it is over one (1) year since the Plaintiff took any steps in the suit contrary to provisions of order 17 Rule 2 (1) of the Civil Procedure Rules. On these grounds the Applicant seeks to be struck off the suit.

Sijenji, counsel for the Applicant submitted along the above lines and argued that the suit is scandalous, frivolous and vexatious against the 2nd Defendant and is an abuse of the process of this court.

All parties were served but solicited no response. The application is not opposed.

M/s Githinji, counsel for the 3rd Defendant also did not oppose the application.

I have considered the application on its merit and hereby grant the same and order and direct that the 2nd Defendant be struck out of the suit and the Plaintiff dated 13th July 2009 in so far as it relates to the 2nd Defendant be struck out and dismissed with costs.

The costs of this application and of the suit shall be paid by the Plaintiff.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI THIS 19TH DAY OF JANUARY 2012.

E. K. O. OGOLA
JUDGE

PRESENT:

..... *for the Plaintiff*
Kariuki h/b for M/s Ongore for the Defendants
Irene – Court clerk