



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
Civil Case 213 of 2009

JAMES RAYMOND NJENGA.....1ST PLAINTIFF

JAMES NJENGA.....2ND PLAINTIFF

- VERSUS -

SALAV DEAN.....1ST DEFENDANT

MRS. SALAV DEAN.....2ND DEFENDANT

MR. Z. I. DEAN.....3RD DEFENDANT

MRS. Z. I. DEAN.....4TH DEFENDANT

MRS. NADIA DEAN BUTT.....5TH DEFENDANT

MRS. NARGI DEAN..... 6TH DEFENDANT

AZIZ HAIDERALI JESSA7TH DEFENDANT

MARINANNE PREDIGER DEAN.....8TH DEFENDANT

RULING

1. Before the court is alleged to be a **Notice to Show Cause** why this suit should not be dismissed under **Order 17 Rule 2** of the **Civil Procedure Rules**. I have perused the record and I am unable to locate the particular Notice to Show Cause and so I am unable to know when it was dated. However, the Plaintiffs and two of the 8 Defendants have responded to the application. This means that they were served and became aware of the same. However, it may also mean that the rest of the Defendants were never served

with the said Notice to Show Cause. There is no affidavit of service on record.

2. While the two Plaintiffs have opposed the application, the 1st and the personal representative of the 7th Defendant support the dismissal of this suit for want of prosecution.

3. I have noted that this is a very old suit which commenced in **1991** at the High Court in Nairobi, and was in **2009** transferred to this Commercial Division. I have also looked at the claim. It is an old claim revolving around shareholder rights in a joint development company. At least one Defendant has since passed away, while at least one Defendant is alleged to be permanently out of the country.

I have carefully considered the alleged Notice to Show Cause. Firstly, it does not appear on court records. Secondly, there is no evidence that all the parties were served. On this ground alone, there is sufficient doubt on the merit of the Notice to Show Cause and I would decline to dismiss the suit.

4. However, and more importantly, the nature of the case is such that if the suit is not concluded on its merit there would still be many issues left hanging regarding the shareholding rights in the joint project company.

5. With these issues in mind I decline to dismiss the suit. However, I direct that the parties should conclude pre-trial proceedings in this matter within the next **60 days**. The matter will be mentioned on **5th October 2012** for further directions.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 26TH DAY OF JULY 2012

E. K. O. OGOLA

JUDGE

PRESENT:

P.M. Kamaara for the Plaintiff

Arum H/B for Muyeto for the Defendants

Teresia – Court Clerk