



**REPUBLIC OF KENYA  
IN THE HIGH OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
CIVIL CASE 41 OF 2003**

**LAWE INVESTMENTS LIMITED.....1<sup>ST</sup> PLAINTIFF**

**EMILY OMONDI (*Suing as the administrator of the  
estate of the late Abigael Aremo*).....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**NATIONAL BANK OF KENYA LTD.....1<sup>ST</sup> DEFENDANT  
GEORGE MULUAN OKOTH.....2<sup>ND</sup> DEFENDANT  
JOSEPH GIKONYO *t/a* GARAM INVESTMENTS.....3<sup>RD</sup> DEFENDANT  
STEHEN KUNGU KAGIRI .....4<sup>TH</sup> DEFENDANT**

**R U L I N G**

By a notice dated 16<sup>th</sup> October, 2009, the parties to this matter were notified that the same would come up on 5<sup>th</sup> March, 2010 for them to show cause why this suit should not be dismissed under **Order XVI Rule 2 (1)** of the **Civil Procedure Rules**. The said sub-rule states as follows-

***“In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if the cause is not shown to its satisfaction, may dismiss the suit.”***

On 5<sup>th</sup> March, 2010, the matter did not proceed as the court was not sitting. When it next came up on 19<sup>th</sup> March, 2010, Mr. Muga held brief for Mr. Mutuku and argued that the proceedings in this case were stayed by the court to allow the plaintiffs to defray the defendant’s advocate’s costs in earlier suits. The plaintiffs had so far paid the 4<sup>th</sup> defendant’s costs and have also made part payment to the first defendant. The balance remaining is Kshs.90,000.00. The plaintiffs therefore seek the court’s indulgence for at least two months within which to settle the costs and list the suit for hearing.

Mr. Kamau for the 4<sup>th</sup> defendant supported the dismissal of the suit on the grounds that the

plaintiffs had been filing suit after suit in this matter without withdrawing the previous ones. They filed an application under a certificate of urgency on 24<sup>th</sup> January, 2003 and after it was adjourned six times, it last came for hearing on 30<sup>th</sup> November, 2004 when it was taken out of the hearing list. Since then the plaintiffs have never taken steps to have it determined. The stay of proceedings was granted on 25<sup>th</sup> March, 2003 and the plaintiffs have yet to pay other defendants' costs. He urged the court to dismiss the suit, and his sentiments were supported by Mr. Onyango for the 1<sup>st</sup> defendant.

In reply, Mr. Muga said that the plaintiffs were interested in the finalization of the suit save that their hands were tied by the court order staying proceedings.

From the above submissions and the court's perusal of the record, it is evident that this matter has been dormant for far too long. It is the last one in a series of cases filed between 1998 and 2003, these being High Court Civil Cases No.350 of 1998; No.867 of 2000; No.958 of 2001; No.1040 of 2002; and now this one. All the suits seek substantially the same reliefs. In consequence thereof, the 1<sup>st</sup> and 3<sup>rd</sup> defendants in this suit filed an application in this suit by way of a Chamber Summons dated 7<sup>th</sup> February, 2003, seeking the following orders-

- 1. That further proceedings in this suit be stayed until the Plaintiffs pay the costs of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants in relation to HCCC No. 893 of 2002 (OS); and HCCC No.958 of 2001 being previous suits which have been abandoned with orders for costs.**
- 2. That the Plaintiffs do provide security for costs of this present suit before any other proceedings can be taken.**
- 3. That the costs of this application be paid by the Plaintiffs in any event.**

The application was based, *inter alia*, on the grounds that all these suits were substantially similar in nature and the reliefs sought were a duplication; and that there was no justification for the multiplicity of suits.

As the application was not opposed, the Court granted order 1 as prayed, thereby staying

proceedings in this suit until the Plaintiffs pay the costs of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants as prayed. That order was made on 25<sup>th</sup> March, 2003, which was 7 years ago. The Plaintiffs were given an open cheque. They could have paid those costs forthwith, or within a reasonable period. However, seven years down the road, they have not yet done so. While I agree with Mr. Muga that their hands are tied by the court's order, I also observe that the Plaintiffs themselves hold the keys and are the ones to unlock the stay order. All they needed to do was to pay the costs. To date they have not done so. It is now a lot more than the one year envisaged under **Order XVI Rule 2 (1)** of the **Civil Procedure Rules**, and the Plaintiffs have yet to unlock the order of stay. They have not given any reasons why they have not paid those costs, and I therefore find that they have not shown sufficient cause why the suit should not be dismissed.

As no cause has been shown to the court's satisfaction, this suit is hereby dismissed with costs. The plaintiffs are the authors of their own misfortune and will also meet the costs of this application.

**DATED** and **DELIVERED** at **NAIROBI** this 16<sup>th</sup> day of April, 2010.

**L. NJAGI**  
**JUDGE**