

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL SUIT 659 OF 2005

JAX KENYA LIMITED PLAINTIFF

VERSUS

**SOUTH AFRICAN MUTUAL LIFE ASSURANCE SOCIETY
DEFENDANT**

RULING

1. The application before the court is dated 4th May, 2006 brought by the Plaintiff/Applicant by way of a Notice of Motion under the Provisions of Section 3(2) of the Judicature Act, Section 3A of the Civil Procedure Act & Order XLIV of the Civil Procedure Rules. The same is supported by the affidavit of ***Nalinchandra Shah***. The application seeks for extension of time within which the suit should be set down for hearing.
2. The Defendant/Respondent opposes the application and has filed grounds of opposition dated 23rd June, 2006 and a replying affidavit dated 8th August, 2009.
3. The Plaintiff/Applicant urges the court to extent time since the orders made on the 31st of July, 2003 to have the matters heard within 12 months in default of which the suit was dismissed lapsed. That since then several things have happened including the parties filing applications, the suit being set down for hearing 2 times but for various reasons was not heard.
4. The Defendant on its part argues that there is no suit before the court as the same stands dismissed. That this application ought to have been made before the expiry of the 12 months. That the Plaintiff does not deserve the sympathy of the court.
5. For the courts consideration is whether this is a proper case for the court to use its discretion under S. 95 of the Civil Procedure Act. S. 95 provides –

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have lapsed.”
6. The period of 12 months granted by the court lapsed on the 30th June, 2004. However the court takes cognizant of the fact that since that period, both parties have taken steps within the suit including fixing the matter down for hearing twice, including long period of waiting for rulings to be delivered. The current application itself has taken more than three years to be heard. It is therefore clear that the delay cannot entirely be blamed on the Plaintiff.
7. The claim is for a colossal amount of money. The Plaintiff in my view should be allowed to have its day in court with a caution that the court does not assist the indolent. The Plaintiff should not always and belatedly seek the court’s discretion.

8. I therefore allow the application and make the following orders-

i. That the parties do proceed forthwith to the registry to fix a hearing date on priority basis.

ii. That the Plaintiff do pay costs of the application to the Defendant which costs I assess at Kshs.25,000/= to be paid before hearing of the suit.

Dated and delivered at Nairobi this 21st day of July, 2009.

ALI- ARONI

JUDGE