

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 42 of 2006

NATIONAL OIL CORPORATION OF KENYA LTD.....
..... PLAINTIFF

VERSUS

ROY SPARES AND HAULIERS
LTD.....DEFENDANT

RULING

Notice of Motion dated 05.06.2007 seeking to strike out the suit and costs of suit.

The application is based on the annexed affidavit of Shemir O. Yakub and Ogoti Nyangena and on grounds that the suit is fatally defective and incompetent. And that claimant has failed and/or neglected to prosecute the case more than one year after close of pleadings. And that the suit is scandalous, frivolous and vexatious.

Legal provisions relied upon is firstly Order VII Rule 1 (2) "The plaint shall be accompanied by an affidavit sworn by the Plaintiff verifying the correctness of the amendments contained in the plaint. Here the plaint dated 07.02.2006 is accompanied by affidavit of the legal officer of the Plaintiff.

In paragraph 2 thereof, she swears that the averments of the plaint are true and correct. In my view, this is sufficient in respect of verifying affidavit by 19.10.1999 dispute was in existence. This suite was filed on 07.02.2006. This was several months after expiration of Limitation Act.

I have read the Replying Affidavit and perused the exhibits annexed. Each party is trying to dispute the liability. Issues of limitation cannot be decided without proper evidence and cross-examination of witnesses.

On the issue of the delay caused in bringing this matter to a hearing, it will be noted that this application was filed on 26.07.07 and in between parties have been quite active.

I therefore dismiss this application and order all the costs occasioned to the applicant in this suit be assessed and shall be paid to the Applicant within a period of 21 days from today.

The Plaintiff is ordered to place the suit on hearing list within the next 45 days.

It is so ordered.

DATED this 18th day of November, 2008.

JOYCE N. KHAMINWA

JUDGE