

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Civil Case 199 of 2000

FRAMWA & JOYMU DISTRIBUTORS PLAINTIFF

VERSUS

KENYA BREWERIES LIMITED DEFENDANT

RULING

By a notice of motion filed on 13th January 2005, Kenya Breweries Ltd (hereinafter referred to as the Defendant/Applicant) seeks to have the suit filed against it by Framwa & Joymu Distributors (hereinafter referred to as Plaintiff/Respondent) struck out and dismissed for want of prosecution. The applicant maintains that the Respondent has taken no action in the prosecution of his suit since 17th January 2001 when the suit was last in court. The applicant has availed a bundle of authorities which is relied upon.

The Respondent objects to the application maintaining that it did take action to prosecute the suit by making attempts to have the suit listed for hearing but that their attempts were frustrated by the fact that no dates were available as the court Diary was full. The Respondent further maintains that there is no evidence of any prejudice to the applicant by the delay in prosecuting the suit.

Having considered this application it is apparent from the court record that from 17th January 2001, there is no action that has been taken in the prosecuting of this suit. Although the Respondent through an affidavit sworn by Francis Mwangi Githinji said to be a Director of the Plaintiff Co. has claimed that efforts were made to have the case listed for hearing, there is no evidence that any of the letters copies of which are annexed as "FMG 2" were delivered to the officers of the applicant's advocate either by post or through any other means. Nor is there any evidence that copies of the letters were forwarded to the court, or any complaint made to the court about the difficulty experienced by the Respondent in fixing the case for hearing.

Secondly Francis Mwangi Githinji the deponent of the replying affidavit depones that he has been away since the year 2001, he does not however say where he has been nor does he annex any evidence in support of his alleged absence. Moreover, the Plaintiff is said to be a limited Co. and no explanation has been given as to why the absence of one director should affect the prosecution of this suit.

I find that the excuses given by the Plaintiff/Respondent cannot hold. The fact of the matter is that the Plaintiff has failed to prosecute its suit and that no good reason has been given for this failure. There is no reason why the case should remain pending since the Plaintiff has apparently lost interest in the case. I do therefore grant the application dated 12th January 2005 and dismiss the Plaintiff/Respondent's suit for want of prosecution.

I award costs of this suit and those of this application to the Defendant/Applicant.

Orders accordingly.

Dated and delivered this 31st day of May 2005

H. M. OKWENGU

JUDGE