



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MILIMANI COMMERCIAL AND TAX DIVISION

CIVIL CASE NO. 229 OF 2010

KINYUA KOECH LIMITED.....PLAINTIFF

VERSUS

EQUITY BANK LIMITED.....DEFENDANT

RULING

1. The subject matter herein was filed in court and subsequently assigned to me when I joined the Commercial and Tax Division in the year 2016, to hear and determine.
2. The matter was fully heard and the decision reserved for judgment sometime at the end of the year 2019. For unknown reasons, the file was not availed to the court for writing of the decision and seems to have been forgotten.
3. However, in the months of June 2021, Hon. Stephany Wambui, Deputy Registrar, notified me that, the parties were inquiring about the judgment. I told her that, I had no physical file nor record of the same. That, the file should be traced to enable me ascertain the status thereof.
4. The file could not be traced immediately, and therefore to mitigate the delay in the matter, I directed that, in the meantime the parties reconstruct the file and I hear the matter afresh and expeditiously. I offered to hear it even during the vacation, that was approaching.
5. Indeed, the parties reconstructed the pleadings and I fixed the matter for hearing on several occasions, the same being adjourned once for inadequate notice to the defence and once due to incomplete plaintiff's documents. The hearing dates were given immediately upon adjournment.
6. At one time, the complainant requested to be heard before 20th August 2021, as he was travelling out of the country and would be away for a considerable period of time, his request was granted. On the scheduled date, he did not join the call. The matter was adjourned. On the next hearing date, he sought for the matter to be heard before a different court. No reasons were advanced for the same, although the defence objected but left the final decision to court.
7. I have considered the request and find that, prima facie, it has no substance in the absence of the reasons thereof, and recusal in the circumstances would be unnecessary. However, in view of the fact that, subsequently, this court is hearing an Election Petition No. 1 of 2021, which should be determined within the prescribed time limits, the hearing of this matter may be delayed.
8. Furthermore, I have since been transferred from the Commercial and Tax Division of the High Court. Finally, as it were, the matter will start *de novo*, and therefore any other court can hear and determine it.
9. In that case I direct that, this matter be referred to the Presiding Judge of Commercial and Tax Division for further action.

It is so directed.

Dated, delivered and signed on this 22nd day of September 2021.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Wambugu for the Plaintiff

Mr Mwenesi for the Defendant

Edwin Ombuna – Court Assistant