



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 167 OF 2011

SAFARICOM LIMITED.....PLAINTIFF

-VERSUS-

PORTING ACCESS KENYA LIMITED.....1ST DEFENDANT

PATRICK MWEU MUSIMBA.....2ND DEFENDANT

RULING

1. This ruling derives from the notice to show cause issued on 19th September, 2019 requiring the parties to show cause as to why the suit should not be dismissed for want of prosecution since it was last in court on 22nd May, 2018.
2. The plaintiff put in the affidavit sworn by its Legal Counsel-Litigation, *Daniel Ndaba*, in response thereto.
3. The deponent explained that the reason behind the delay in prosecuting the suit since it was last before court is that there were ongoing negotiations amongst the parties with a view to settling the matter and which negotiations fell through, hence the plaintiff is now desirous of having the suit heard on merit.
4. The deponent therefore urged this court to exercise lenience in allowing the plaintiff to prosecute its case.
5. I have considered the explanation offered by the plaintiff.
6. The record confirms that the parties had previously been engaging in out-of-court negotiations. According to the record, when the matter was last in court on 22nd May, 2018 *Mr. Havi*, learned counsel for the plaintiff disclosed to the court that the parties were unable to reach a settlement and that the plaintiff wished to have the suit proceed for hearing. Finally, the court directed the parties to take a hearing date from the registry.
7. It is therefore clear from the foregoing that the plaintiff's present account holds no water and in any event, the plaintiff has not tendered any evidence to show that since 22nd May, 2018 the parties continued in their attempts to arrive at a settlement.
8. I am not convinced that the plaintiff has given any viable explanation for its failure to set the suit down for hearing as earlier directed by the court, especially given the age of the suit.

To my mind, the plaintiff has shown no seriousness in prosecuting its case.

9. However, in the interest of substantive justice, I will not dismiss the suit but I hereby direct that it be prosecuted within 120 days from today failing which it shall stand dismissed.

It is so ordered.

Dated, signed and delivered at NAIROBI this 6th day of February, 2020.

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L. NJUGUNA

JUDGE

In the presence of:

.....for the Plaintiff

.....for the 1st and 2nd Defendants