



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 692 OF 2007

ADAM MOHAMMED EGGE.....PLAINTIFF/APPLICANT

-VERSUS-

DOMINION FARMS LIMITED.....DEFENDANT/RESPONDENT

RULING

1. The plaintiff has brought a notice of motion dated 30th September, 2016. The motion is supported by the grounds set out in the body thereof and the sworn affidavit of *Catherine N. Mwangi*, and the orders sought are as follows:-

i. Spent.

ii. THAT this Honourable Court be pleased to give appropriate directions by increasing the timeline for obtaining a hearing date for the main suit.

iii. THAT in the alternative, this Honourable Court be pleased to grant an urgent hearing date as per the directions given on 14th July, 2016.

iv. THAT the costs of the application be provided for.

2. The deponent, Catherine N. Mwangi, stated that when the matter came up in court for hearing on 14th July, 2016 the plaintiff's counsel sought an adjournment, which request was granted on the condition that the matter be set down for hearing within 90 days from the abovementioned date, failure to which the suit shall stand dismissed.

3. The aforesaid deponent added that attempts to obtain a hearing date for the suit were futile since there were no available dates. That the plaintiff was eventually given a mention date which fell outside the 90-day period and the plaintiff is apprehensive that the suit will be dismissed for failure to comply with the orders made on 14th July, 2016.

4. It is noted that the defendant has not filed any response to the motion and hence the same is unopposed.

65. This court has taken note of the grounds set out in the body of the application together with the affidavit in support thereof. The substantive issue really is whether the plaintiff is deserving of an order for extension of time required to obtain a hearing date.

6. It is without a doubt that when the matter came up in court for hearing on 14th July, 2016, the plaintiff's advocate indicated that she would be seeking an adjournment on the basis that negotiations were taking place between the parties and they were experiencing challenges in reaching an agreement. This court, in taking cognizance of the fact that this is a fairly old case, at first declined to grant the prayer for an adjournment, but chose to reconsider the same solely upon being informed that the plaintiff was unwell and hence absent from court. It was similarly well noted that the defendant did not turn up in court on the said date.

7. This court consequently granted the prayer for an adjournment, thereby ordering the plaintiff to set the suit down for hearing within 90 days. It is not in question that the matter is yet to be heard. The plaintiff has provided the explanation that efforts had been made to obtain a date but the court diary was full. This court has perused the file and indeed confirmed that the plaintiff wrote letters to the deputy registrar in that respect on 1st August, 2016 and 6th September, 2016. However, there is no evidence to indicate that the court diary was full or that there were no available dates as is claimed by the plaintiff.

8. That notwithstanding, it would appear the deputy registrar did not revert on the subject. It is therefore reasonable to opine that the plaintiff had taken practical steps towards obtaining a hearing date for the suit within the stipulated timelines but that no response was made.

9. Upon further perusal, it is noteworthy that the matter was before court on various occasions thereafter but the motion was neither heard nor determined. In fact, it seems the suit was scheduled for hearing on 29th October, 2018 at which point the plaintiff's counsel pointed out the fact that the motion was yet to be heard. This was through no fault on the part of the plaintiff.

10. The statutory provisions cited by the plaintiff do not include the provision on enlargement of time. However, this court cites **Order 50, Rule 6** of the Civil Procedure Rules which bestows upon it the power to enlarge time; in this case, the time for setting the suit down for hearing.

11. This court in turn acknowledges that the motion is unopposed and is of the considered view that little if any prejudice will befall the defendant in the event that the parties proceed with the hearing. The explanation given by the plaintiff is acceptable and in any case, the motion was brought timeously. It would therefore be in the interest of justice for me to exercise my discretion in his favour.

12. In the end, this court finds that the motion is merited and the same is allowed in terms of prayer ii). The following additional orders are made:-

a. The plaintiff shall prosecute the suit within 60 days from today's date and a hearing date given on priority basis.

b. There shall be no order as to costs.

Dated, signed and delivered at NAIROBI this 7th day of February, 2019

L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendant/Respondent