

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 224 OF 2007

DR. JOYCE KENDI MUNGUTI.....1ST PLAINTIFF

NENE NZYUKO.....2ND PLAINTIFF

(Both suing as the administrators of the

estate of the late KATAMA GEORGE CHAMANJE MKANGI – deceased)

VERSUS

BOLPAK TRADING COMPANY LIMITED.....1ST DEFENDANT

AHAMED MOHAMED.....2ND DEFENDANT

RULING

1. The notice to show cause was issued on 22nd January, 2019 against the plaintiffs requiring them to show cause as to why their suit should not be dismissed for want of prosecution. In reply, an affidavit was sworn by *Kiragu Kimani*. Therein, the deponent stated that the matter was last in court on 14th November, 2016, when the 1st defendant's application seeking leave to file an amended defence was scheduled for hearing but that the same was stood over generally since the said defendant's advocate was absent from court. That the plaintiffs' advocate made a proposal to the effect that parties agree on the filing of their respective amended pleadings.

2. The deponent further asserted that the 1st defendant's advocate responded by stating that their application for amendment had been allowed, which is not the true position. That in view of this, the plaintiffs' advocates sought to state the correct position while at the same time seeking the defendants' views on reaching a consent on amendment of the pleadings. That due to a lack of response, the plaintiffs opted to file an application seeking leave to amend their plaint and that they are keen on prosecuting their case.

3. I have taken to mind the assertions made in the reply. I have also taken time to peruse the documents annexed thereto together with the court record. It is correct that the matter was last in court on 14th November, 2016 for the hearing of the 1st defendant's application as indicated by the plaintiffs and that the same was stood over generally in the absence of the 1st defendant and as it stands, there is no indication that the application was ever allowed. It is also correct that the plaintiffs through their advocates indulged the 1st defendant's advocates on entering into a consent but this did not elicit the anticipated response from the 1st defendant.

4. In view of the above, I am convinced that the plaintiffs did not intentionally delay the matter; rather, the delay was occasioned by the back and forth correspondences between the parties in respect to the amendment of the pleadings and it would seem, no agreement was reached. Further to this, it is well noted that the plaintiffs filed an application seeking leave to amend their plaint on 7th February, 2019. To my mind, it is apparent that they are still keen on pursuing the suit even though I have observed that this is quite an old matter which ought to be expedited. That said, I am satisfied that the plaintiffs have shown cause as to why their suit ought not to be dismissed.

5. In view of the foregoing, the plaintiffs are granted the opportunity of prosecuting their suit. However, since there are two (2) pending applications by the plaintiffs and 1st defendants respectively that ought to be dispensed with first, I order that the parties fix the earliest date possible for the hearing of the same. Further, that the plaintiffs prosecute the suit within 60 days from today, failure to which it shall be dismissed.

Dated, signed and delivered at NAIROBI this 14th day of February, 2019

L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiffs

..... for the 1st Defendant

..... for the 2nd Defendant