



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO 189 OF 2015

(FAST TRACK)

MARY MUTHONI NJOGU.....APPLICANT

VERSUS

NDIMA TEA FACTORY COMPANY LIMITED.....1ST DEFENDANT

KENYA TEA DEVELOPMENT AGENCY

MANAGEMENT SERVICES LIMITED.....2ND DEFENDANT

KENYA TEA DEVELOPMENT AGENCY

HOLDINGS LIMITED.....3RD DEFENDANT

KENYA TEA DEVELOPMENT AGENCY LTD.....4TH DEFENDANT

RULING

1. The Court record of 24th July 2018 and 9th October 2018 shows that some negotiations have been going on even after the current application of 15th July 2016 had been filed. Indeed, on 9th October 2018, Mr. Mwangi holding brief for Wahora for the Defendants accepted a request for 30 day adjournment to receive progress on the negotiations. While these issues that are post the date of the application do not explain the delay in the prosecution of the matter, they may corroborate the Respondent's account as to why the Replying affidavit has not been filed.

2. Turning to the application itself, it is dated 25th July 2016 and although filed on 10th April 2017, it is based on the facts obtaining as at the date when Mr. Christopher Mwangi Kariuki swore the affidavit on 25th July 2016.

3. The fulcrum of the application is paragraph 7 of the affidavit and it reads,

“7. That since the dismissal of the Plaintiff's application dated 17.4.2010 over a year ago, the Plaintiff has not taken any further action towards the prosecution of this suit and her conduct only demonstrates that she is disinterested and undesirous of prosecuting this matter”.

4. The application was dismissed on 5th June 2015 and that would be just one (1) year before the date of the current application. The inaction had persisted for about 1 month after the one year period envisaged by the Rules. That cannot be said to be inordinate. If I consider that and the events that happened after the filing of the application which reveal some sort of negotiations then I am unable to make orders that shut out the Plaintiff.

5. The Plaintiff though indolent has now assured Court through Counsel of her readiness to prosecute the suit. It is the policy of the Court, as much as is possible and in so far as it does not unduly prejudice the Defendant, to allow a matter to be heard and determined on merit. This Court will grant an opportunity to the Plaintiff but on terms.

6. I make this order keenly aware that the Defendant does not say that the delay will handicap it in the defence of the matter, say by actual

non-availability of the witnesses or loss of documents.

7. These are my orders.

(1) Whilst the application of 25th July 2016 is dismissed, the Plaintiff shall bear the costs in any event and the same are payable within 14 days of agreement or assessment.

(2) The Plaintiff shall within 45 days hereof take steps necessary to prosecute the case, failing which the suit will stand dismissed without need for any further orders.

Dated, Signed and Delivered in Court at Nairobi this 13th day of February, 2019.

F. TUIYOTT

JUDGE

Present:

Kamande for Plaintiff

Ngige for 1st, 2nd and 3rd Defendants

Nixon- Court Assistant