

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1231 OF 2004

CHAPEX LIMITED.....1ST PLAINTIFF

GIBSON O. SHIRAKU.....2ND PLAINTIFF

-VERSUS-

STANDARD CHARTERED BANK OF KENYA LIMITED...DEFENDANT

RULING

1. The notice to show cause was issued on 22nd January, 2019. In response thereto, the plaintiffs filed a replying affidavit sworn by *Livingstone Maina Ombete* indicating that whereas the suit was last in court on 29th September, 2014, the 2nd plaintiff herein; who is the managing partner of the 1st plaintiff; suffered a major stroke and was admitted in hospital. That as a result of the said illness, he lost his speech briefly but has since partly regained the same.

2. I have considered the averments raised in the reply together with the annexures thereto. I have equally perused the court record. Having done so, it is upon me to determine whether the reasons given for the dormancy are sufficient.

3. To begin with and contrary to the assertions in the reply, the matter was last in court on 24th November, 2014. The court record reveals that on the said date, the defendant's counsel sought an adjournment for the reason that the intended witness had left employment and thus the difficulty in complying with pre-trial directions. Despite opposition by the plaintiffs' advocate, the court granted the prayer for an adjournment and ordered the parties to take a hearing date at the registry.

4. In his reply, the deponent asserted that the 2nd plaintiff fell ill prior to the 24th November, 2014. This was not brought to the attention of the court when the matter was last before it, though I have seen a letter dated 26th June, 2015 addressed to the High Court Registrar to that effect but which letter does not bear the court stamp. It therefore remains unclear whether the court was officially made aware of the circumstances raised in the reply.

5. Suffice it to say, a copy of the medical report dated 27th February, 2015 has been annexed to the affidavit. To my mind, this forms sufficient reason all the same. In any event, the record shows that the plaintiffs had all along made reasonable attempts to prosecute their suit and at one point, the file was indicated as having been missing. However, I am alive to the fact that this is quite an old matter which needs to be heard and determined expeditiously.

6. In view of the foregoing, I will grant the plaintiffs an opportunity to prosecute their suit and order that the same be done within 120 days from today, failure to which the suit shall stand dismissed.

Dated, signed and delivered at NAIROBI this 1st day of March, 2019

L. NJUGUNA

JUDGE

In the presence of:

.....for the Plaintiffs

.....for the Defendant