



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 403 OF 2013

IMPRESSIONS ADVERTISING LIMITED.....PLAINTIFF

VERSUS

DIGITAL PRINTING & IMAGING

SOLUTIONS LIMITED.....1ST DEFENDANT

TIMOTHY NJONJO NGARUIYA.....2ND DEFENDANT

SAMMY THUO JUMA.....3RD DEFENDANT

ANTHONY GATHURI MWANGI.....4TH DEFENDANT

RULING

The matter herein was filed on the 20th day of September, 2013 together with the application dated the same date, which application was heard and determined by Waweru Judge vide a ruling dated 26th September, 2013.

After that, the next time the matter was in court was on 29th day of May, 2015 before it was listed for Notice to Show cause on 22nd February,, 2019.

When the matter was listed on 22nd February, 2019, counsel for the plaintiff sought leave to file an affidavit in response to the notice. The court has perused the affidavit and has noted the reason given by counsel for the plaintiff for non prosecution of the matter which is; that the court file was missing and could not be traced at the registry after the ruling of the court that was delivered on the 29th May, 2015.

Counsel has deponed that she did several letters to the Deputy Registrar seeking her assistance in tracing the file. The letters have been annexed to the affidavit aforesaid.

The court has noted that the letters were done between March, 2016 and November 2016 and they were all received at the registry and duly stamped. The last of those letters was done on 24th November, 2016 meaning that for more than two years, counsel did not follow up with the registry to find out if the file was ever traced.

Though the plaintiff has annexed letters for invitation to fix hearing dates, which were done in the year 2017, there is no indication as to whether the court file had been traced or not.

All in all, the court would like to appreciate the efforts that were put by counsel for the plaintiff in writing to the Deputy Registrar seeking assistance in tracing the file, without failing to note that, no explanation was given why no action was taken for more than two years since the last letter was written.

In the interest of justice, the court shall give the plaintiff an opportunity to prosecute his case and this being an old matter, an order is made that the same be prosecuted with four (4) months from the date hereof failing which, it shall stand dismissed.

Dated, signed and delivered at Nairobi this 18th day of JULY, 2019.

.....

L. NJUGUNA

JUDGE

In the presence of

.....*for the Appellant.*

..... *For the Respondents.*