



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 207 OF 2014

GATTS (K) LIMITED.....PLAINTIFF/APPLICANT

-VERSUS-

PETER AWANDO GODIAL.....1ST DEFENDANT/RESPONDENT

ROSELINDA AMOLO AWANDO.....2ND DEFENDANT/RESPONDENT

TOM JOHN AWANDO.....3RD DEFENDANT/RESPONDENT

GEORGE GITONGA MUCHIRI T/A FANTASY AUCTIONEERS.....4TH DEFENDANT

RULING

1. The plaintiff/applicant has taken out the Notice of Motion dated 15th October, 2019 in which it sought for the enlargement of time to enable it comply with the orders made on 12th July, 2019. The Motion is supported by the affidavit of *Nadeem Khan Shakoor*.
2. The 1st to 3rd defendants/respondents filed Grounds of Objection dated 4th November, 2019 to resist the Motion.
3. The Motion was argued orally before this court, with counsels for the respective parties choosing to rely on the documents filed in support of or against the Motion.
4. I have considered both the grounds set out on the face of the Motion and the facts deponed in the affidavit in support thereof. I have also considered the Grounds in opposition.
5. It is apparent from the record that the 1st to 3rd respondents filed the application dated 4th April, 2019 seeking the dismissal of the applicant's suit for want of prosecution, which application was resisted by the applicant. Upon hearing the parties, this court dismissed the application vide its ruling delivered on 12th July, 2019 and ordered, *inter alia*, that the applicant complies with the pre-trial directions given on 6th September, 2017 within 15 days from the date of the order and further, that the applicant prosecutes its suit within 120 days from the date of the order.
6. The applicant is now seeking an extension of time to comply with the abovementioned orders.
7. Under **Order 50, Rule 5** of the **Civil Procedure Rules** courts have an unfettered discretion to enlarge the time fixed for doing any act.
8. In the present instance, Nadeem Khan Shakoor in his supporting affidavit deponed that he has been following up the progress of the suit with the Plaintiff's erstwhile firm of advocates, Ondieki & Ondieki, only to be informed that the abovementioned ruling was to be delivered on 27th August, 2019 and that thereafter, the said advocates did not give the deponent any further updates on the status of the application.
9. The deponent went on to explain that he then instructed the current firm of advocates, S. B. Mbeche & Co., to file a notice of change of advocates and ascertain the position in regard to the application, and it is at this point that it was discovered that the ruling had already been delivered on 12th July, 2019.
10. Mr. Shakoor's averments were echoed by Mr. Mbeche learned counsel for the applicant, in arguing that the mistake fell on the applicant's counsel and that the applicant is desirous to prosecute its case.
11. On their part, the 1st to 3rd respondents are of the view that the applicant has offered no reasonable explanation for failing to comply with

the order of 12th July, 2019. They also argued that it is the duty of the applicant at all times to pursue its case with its advocate. The respondents cited the case of **Bi Mach Engineers Limited v James Kahoro Mwangi [2011] eKLR** where the Court of Appeal held that it is not sufficient for an applying party to blame his or her advocate for whatever mistake; rather, it is the duty of an applicant to actively pursue his or her advocate to establish the correct position in the matter.

12. The respondents also pointed out that they continue to be prejudiced as a result of the applicant's non-compliance and neglect to prosecute its suit, and it would be unfair for them to continue being held hostage in the process.

13. In the end, the respondents urged this court to find that the application is a mere abuse of the court process since the applicant has not complied with the orders made on 12th July, 2019.

14. Having taken into account the rival averments as well as the material availed to this court, I note that the arguments brought forth by the applicant on the failure by its erstwhile advocates in updating them were similarly raised before me in an earlier application dated 4th April, 2019. It is therefore apparent that the applicant has developed a trend of casting blame on its advocates. I therefore find the grounds advanced in support of the Motion not to be genuine or plausible. I am satisfied that the application can safely be regarded as an abuse of the court process. In my view, the applicant does not portray the characteristics of a party who is keen or interested in prosecuting its case.

15. The applicant has not demonstrated any reasonable attempts made in complying with the orders earlier issued by this court so as to warrant the exercise of this court's discretion in its favour.

16. Consequently, the application is hereby dismissed with costs to the 1st to 3rd defendants/respondents. This suit stands automatically dismissed with costs pursuant to the orders issued on 12th July, 2019.

Dated, signed and delivered at NAIROBI this 15th day of November, 2019.

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J.K. SERGON

JUDGE

In the presence of:

..... **for the Plaintiff/Applicant**

..... **for the 1st, 2nd and 3rd Defendants/Respondents**