



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO.322 OF 2018

GEORGE W. OMONDI.....PLAINTIFF

VERSUS

GUILDERS INTERNATIONAL BANK LTD.....1ST DEFENDANT

GUARDIAN BANK LTD.....2ND DEFENDANT

ZEN NOMINEES LIMITED.....3RD DEFENDANT

WHITESTONE AUCTIONEERS LTD.....4TH DEFENDANT

LAND REGISTRAR, NAIROBI.....5TH DEFENDANT

RULING

On **5th August 2019** a Notice to Show Cause why this suit should not be dismissed was issued to the Plaintiff in this matter. In reply to the NTSC the Plaintiff filed the Replying Affidavit dated **12th September 2019**, sworn by **GEORGE W. OMONDI**, the Plaintiff herein, in which he urged the Court not to dismiss the suit.

I have carefully perused that Replying Affidavit. I note that the Plaintiff infers that they were awaiting the Ruling of the Court on the Notice of Motion dated **6th June 2016**, which Ruling the Plaintiff claims is yet to be delivered. This is however not the correct position. The Ruling in that Application, which is in the court file, indicates that a decision in favour of the Plaintiffs was delivered by **Hon Justice Olga Sewe** on **9th February 2018**. The Court record for that date shows that the Ruling was delivered in presence of Counsel for the Defendants, but that there was no representation for the Plaintiff. That was the last activity in the file before the NTSC was issued.

The Plaintiffs claim that they regularly sent clerks to peruse the file in the court Registry cannot be correct, because if this had done then they would not have failed to see the Ruling in the Court file. My own view is that having the benefit of injunctive orders in his favour the Plaintiff opted to sit back and take no action to set down the suit for hearing.

Be that as it may be given that the Ruling was delivered in the absence of Counsel for the Plaintiff, I find that it would be prejudicial to dismiss the suit. Summary dismissal of suits has been held to be a draconian measure and one which should only be applied as a last resort.

The Plaintiff has indicated its willingness to pursue the suit and ought therefore to be given a chance to prosecute the same. Accordingly I dismiss the NTSC dated **5th August 2019** and direct as follows:-

1. The Amended Plaintiff to be served upon all parties within 7 days of this Ruling.
2. The Defendants to file and serve their defences to the Amended Plaintiff within 7 days of service.
3. Parties to appear before the Hon Deputy Registrar for Case Management on **19th November 2019**.
4. The suit to be set down for hearing within 90 days of the date of this Ruling.

5. If the suit is not so set down for hearing within 90 days then the same will stand dismissed with no further reference to the Plaintiff.

6. Costs of the notice to Show Cause to be met by Plaintiff.

Dated in **Nairobi** this **12th** day of **November 2019**.

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Justice Maureen A. Odera