



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 404 OF 2013

DENAICE MUMBI MUTINDA.....PLAINTIFF

- VERSUS -

BARCLAYS BANK OF KENYA LIMITED.....DEFENDANT

RULING

1. **Denaice Mumbi Mutinda** (*the plaintiff*) filed this case against **Barclays Bank of Kenya LTD** (*The bank*) on **13th September, 2013**. The main prayer in the plaintiff's plaint is for a declaration that the charge property **LR No. Ngong/Ngong/41160** is invalid and consequently that the bank's exercise of its statutory right of sale was unlawful. The plaintiff filed an interlocutory application seeking an injunction dated **11th September, 2013**.
2. The Court on **18th September, 2013**, granted an order for the maintenance of status quo over the charged property. On that date the court also gave directions on the dates of filing the parties submissions. The plaintiff filed her submission on **13th November, 2013** while *the bank* filed its submissions on **26th November, 2013**.
3. In the intervening period, and because the order of injunction had lapsed, *the bank* scheduled sale of the charge property. As a consequence, the plaintiff filed yet another application for injunction dated **3rd February, 2014**.
4. Because the plaintiff failed to attend court, even when summoned, the court on **29th May, 2014** stayed the plaintiff's application and ordered parties to undertake pre-trial process.
5. The order of the court made on **29th May, 2014**, is the last order in this file until the bank filed a **Notice of Motion** dated **9th January, 2017**, seeking dismissal of the suit for want of prosecution.
6. The plaintiff, though served with the application, did not file any documents in opposition nor was there attendance on the plaintiff's behalf at the hearing of the application.
7. The delay from **29th May, 2014**, is inordinate and inexcusable. It is undoubtedly prejudicial to *the bank* as was stated in the case **Nilesh Premchand Muji Shah & Another t/a Ketan Emporium vs Popat & others [2016] eKLR**, such delay infringes on a party's rights and legitimate expectations that the disputes against it would be resolved expeditiously.
8. There is merit in the application – it is clear that the plaintiff has lost interest in this case and the court should not allow it to continue to be on record.
9. The plaintiff, when filing this suit filed summons to enter an appearance but the Deputy Registrar failed to sign them. Accordingly, it cannot be said, as the advocate for *the bank* submitted, that this suit abated as per **order 5 Rule 1 (6) of the Civil Procedure rules** because those summons to date have not been issued by the Deputy Registrar of this Court.
10. Accordingly the orders of this court are as follows:
 - a. This suit is hereby **dismissed** with costs to the defendant for want of prosecution.
 - b. The defendant is awarded costs of the Notice of Motion dated **9th January, 2017**.

DATED, SIGNED and DELIVERED at NAIROBI this 19th day of July 2018.

MARY KASANGO

JUDGE

Ruling read in open court in the presence of

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant