

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

HCCC NO. 350 OF 2011

KENYA PLANTERS COOPERATIVE UNION LTD...PLAINTIFF/RESPONDENT

VERSUS

KENYA RAILWAYS CORPORATION.....1ST DEFENDANT/APPLICANT

COMMISSIONER OF LANDS.....2ND DEFENDANT/APPLICANT

RULING

1. This Ruling is further to the Ruling delivered herein on 19th June 2018 on the Notice of Motion dated 16th October 2017. In the said Application, the 1st Defendant/Applicant was seeking for various prayers, namely, the dismissal of the suit for want of prosecution and an order that, the Court do order for release of the sum of Kshs. 3,130,000 deposited pursuant to the Court's ruling and/or orders of 30th January 2012 and 7th May 2012.

2. In the Ruling I delivered on 19th June 2018, I made an observation at paragraph 8 thereof that, the Applicant had not sought for the dismissal of the suit. Apparently, that is an error on the face of the record, as there is a prayer for the same in the Application. In the interest of Justice and to correct the error, I hereby recognize the prayer for the dismissal of the suit. I therefore order that, in view of the fact that, it is not contested that, the suit has been dormant for over one year, then the suit can and shall be ordered dismissed under the provisions of order 17 Rules (2) of the Civil Procedure Act and hereby order the suit to be marked as dismissed for want of prosecution as prayed.

3. It therefore follows that, the sum of Kshs 3,130,000 deposited herein plus all the interest accruing thereto up to the date of liquidating the Account, shall be and is hereby ordered payable to the 1st Defendant/Applicant. The 2nd Defendant too were served but did not come to Court. I am not sure they would contest the prayer for dismissal of the suit.

4. In conclusion, I allow the Notice of Motion Application dated 16th October 2017 in terms of prayer 1, 2 and 3.

5. It is so ordered.

Dated, delivered and signed on this 3rd day of July 2018 in an open Court at Nairobi.

G.L. NZIOKA

JUDGE

In the presence of;

No appearance for the Plaintiff/Respondent

Mr. Ochieng for Mr. Ngwara for the 1st Defendant/Applicant

No appearance for the 2nd Defendant/Applicant

FredCourt Assistant