



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

HCCC NO.34 OF 2007

SANPAC LIMITED.....PLAINTIFF

VS

STANBIC BANK KENYA LIMITED.....DEFENDANT

RULING

1. By an application dated 12th April 2018 and brought under the Provisions of Order 17 Rule 2 of The Civil Procedure Rules, the Plaintiff seeks to reinstate this suit which was dismissed on 31st October 2014.

2. This is an old suit filed in 2007, 11 years now. The Record shows that one witness was heard on 29th November 2010 by Hon. Mugo J. and his evidence further heard on 1st February 2011, 23rd February 2011 and 27th June. Thereafter, because of the departure of Hon. Mugo J, the proceedings needed to be typed. An order in that regard was made by Hon. Kimondo J. on 26th October 2011. By 29th November 2011 the proceedings had not been typed. This remained so at least by 13th December 2011 when Hon. Mabeya J. directed as follows:-

“The Deputy Registrar is directed to ensure that the proceedings are typed and matter mentioned on 31.1.2012 to confirm status. Mention Notice to issue”.

3. There was then a lapse of about three (3) years and then on 31st October 2014, the suit was dismissed by Hon. Gikonyo J. on a Notice to Show Cause issued under the provisions of Order 17 Rule 2 which provides:-

“(1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.

(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.

(3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.

(4) The court may dismiss the suit for non-compliance with any direction given under this Order”.

4. The Record shows that prior to 13th December, 2011, the Plaintiff was diligent in prosecuting this matter and one witness was presented in three sessions for hearing. But there have been two periods of significant inactivity. One from 31st December 2011 to 31st October 2014 when the matter was dismissed. A period of three years. Then from 31st January 2014 to 12th April 2018 when the present application was filed. A period of about 3 years 5 months. Are these long delays explained?

5. There is a letter dated 13th July 2012 by the Plaintiff’s Counsel seeking to know the status of proceedings. One letter in three years. Then letters of 18th June 2015, 11th May 2016 and 20th February 2018. These are three letter in 3 years and five months. The three letters being are far in between. It is said by Counsel for the Plaintiff that the file could not be traced and hence the inactivity. However, the one letter in three years and three letters in 3 years and five months is not the portrait of a diligent litigant. Even if accepted that the file could not be traced, the Plaintiff does not come out as putting sufficient effort to resolve the problem and to progress it.

6. The Plaintiff also complains that its Counsel did not receive the Notice to Show Cause which led to the dismissal. Even if I was to accept this as true, the record shows that in a period of three years and five months the Plaintiff only moved the Court three times by way of letters seeking the status hereof. The Plaintiff has shown considerable laxity.

7. That laxity may have been excused if it would not prejudice the Defendant. But this suit is now 11 years old and from the Plaintiff and the evidence that was received by the Court the dispute is in respect to a Contractual relationship that begun sometime in 1992. Now 26 years past. The Defendant through its Senior Legal Counsel says that because of the lapse of it, it will not have witnesses to defend the matter. This is not an insubstantial concern. It is a prejudice to the Defendant.

8. The delay has been considerable. The delay is not excusable. The Plaintiff is very substantially to blame for the delay. The delay, it has been argued, will compromise the Defendant's ability to mount its Defence. These are circumstances that dissuade me from allowing the Motion of 12th April 2018. It is hereby dismissed with costs.

Dated, Signed and Delivered in Court at Nairobi this 13th day of July, 2018.

F. TUIYOTT

JUDGE

PRESENT:

Lepramanya h/b Chacha for Applicant

Byaruhansa for Gichuhi for Respondent

Nixon - Court Assistant