



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NUMBER 269 OF 2011 (OS)

IN THE MATTER OF SECTION 27 OF THE LIMITATIONS ACT CHAPTER 22 LAWS OF KENYA

AND

IN THE MATTER OF SECTION 1, 1B, 3, 3A OF THE CIVIL PROCEDURE ACT

AND

ORDER 37 RULE 6 (1) AND RULE 34 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF SECTION 288 OF THE COMPANIES ACT CHAPTER 486 LAWS OF KENYA

AND

IN THE MATTER OF SECTION 36 OF THE BANKING ACT CHAPTER 488 LAWS OF KENYA

BETWEEN

TIMOTHY NDUVI MUTUNGI.....PLAINTIFF

VERSUS

DAIMA BANK LIMITED (IN LIQUIDATION)..... 1ST DEFENDANT

DEPOSIT PROTECTION FUND BOARD..... 2ND DEFENDANT

TRAVEL CONCEPTS LIMITED..... 3RD DEFENDANT

JONATHAN MUIA NZIUKO..... 4TH DEFENDANT

IDAH NDUVA..... 5TH DEFENDANT

MUSAN ENTERPRISES LIMITED..... 6TH DEFENDANT

RULING

Daima Bank Ltd (In Liquidation) and Deposit Protection Fund Board, the 1st and 2nd Defendants took out the motion dated 24th April, 2013 and applied for this suit to be dismissed for want of prosecution. The motion is supported by the affidavit of Onesmus Muli.

When served with the motion, Timothy Nduvi Mutungi the Plaintiff/Respondent filed a replying affidavit he swore to oppose the application.

When the motion came up for inter-parties hearing, learned counsels appearing in the matter were allowed to make oral submissions. The 1st

and 2nd Defendants argued that it is now more than one (1) year since this suit came up before court and the Plaintiff has failed to take the relevant steps to have the suit ready for hearing. The duo pointed out that the Plaintiffs appear to have lost interest in pursuing the suit, therefore, it is just and fair for the suit to be dismissed for want of prosecution.

The Plaintiff has strenuously opposed the application and has enumerated the factors which caused the delay in prosecuting the suit.

First, it is argued that the 4th Defendant took time to obtain letters of Administration. Secondly, it is stated that there were serious difference between him and the firm of N. R. Nyamai & Co. Advocates. It is the Plaintiff's submission that the clash between the Plaintiff and the Defendants further delayed the conclusion.

I have carefully considered the response vis-à-vis the arguments put forward in support of the motion and it is clear that the Defendants have not controverted the reasons advanced in support the application for dismissal. The Plaintiff has been categorical that the delay was caused by the disagreement he has had with his erstwhile advocate. It is also not in dispute that it took time to obtain the letters of administration on behalf of the aforesaid defendant.

I find the reasons advanced to explain the delay to be plausible. Consequently, I find no merit in the application dated 24th April, 2013. The same is dismissed with costs awaiting the outcome of the suit.

Dated, signed and delivered at Nairobi this 20th day of July, 2018.

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J K SERGON

JUDGE

In the presence of

..... *for the plaintiff*

..... *for the Defendants*