



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

HCC NO.59 OF 2012

HAMADI MURITHI MUNYI

ALI ABDULAJID AHMED

ABDUL KARURI MWANGI

ABDALLAH WAITITU IDDI

ISSA MOHAMED MOHAMMEED ABDI

ABDI MOHAMMED MBITHUKA (suing on behalf of themselves

And Pumwani Riadha Mosque Committee).....**PLAINTIFFS**

Versus

CHASE BANK LIMITED.....**DEFENDANT**

RULING

1. The Provisions of Order 17 Rule 2 of The Civil Procedure Rules are on dismissal of Suits for want of Prosecution and reads:-

“2(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 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”.

2. Whether it is on its own motion or at the instance of a Party, the Court will only proceed to dismiss a suit for want of Prosecution if it is satisfied that,

i. No application has been made or step taken by either party for one year , and

ii. If no good cause is shown for the inaction.

3. The Defendant has moved Court through the Notice of Motion of 18th March 2016 seeking the Dismissal of the suit for the reason that the matter had been last in Court on 6th November 2014 and the Suit had since been dormant. While it is true that the suit had been inactive for over one year by the date of Application, the last activity was on 4th February 2015 (and not 6th November 2014) when Counsel for the Defendant invited that of the Plaintiff for a meeting of their representatives on 12th February 2015 for purposes of fixing a hearing date.

4. There is however no entry in the Court file as to what, if anything, took place on 12th February 2015.

5. The Plaintiff opposed the Application by filing Grounds of Opposition dated 13th May 2016 and a Replying Affidavit of Abdul Karuri Mwangi sworn on even date. He says that he and his Co-Plaintiffs were present in Court on 6th November 2014 when the matter was due for hearing but hearing could not proceed as their previous advocate Mr. Kibe Mungai was away attending a matter before the Court of Appeal.

6. That after this the Plaintiffs visited the Chambers of their previous advocates on several occasions inquiring about the next hearing date but were told that the Court diary for the year 2015 was full and that the Advocates were making efforts to have the matter heard in 2016. They were therefore surprised when confronted with the current Application for dismissal.

7. This Court accepts the explanation by the Plaintiffs and will give them a chance to prosecute the case. In giving this respite to the Plaintiffs the Court bears in mind the following:-

i. The Plaintiffs were in Court on 6th November 2014 when the matter was due for hearing.

ii. The Plaintiffs have affirmed their willingness to prosecute their case.

iii. Although there was inactivity for more than one year before the Application was filed on 18th March, 2016, the last activity was on 4th February 2015 which would be about 48 days outside the appointed time of one year. In that sense the file may not have been dormant for an inordinately long time.

8. But even as I dismiss the Motion of 18th March 2016, I impose the following conditions:-

i. The Plaintiffs shall pay the Defendant costs of the Dismissed Application within 14 days of the agreement or taxation of the Costs.

ii. The Plaintiffs shall within 30 days of this Ruling have this matter fixed for hearing.

iii. In default of either of the above conditions, the suit shall stand dismissed without need for any further Order of the Court.

Dated, Signed and Delivered in Court at Nairobi this 10th day of February, 2016.

F. TUIYOTT

JUDGE

PRESENT:

Okeyo for Mbugua Mureithi for Plaintiff

Mathenge for Defendant

Alex - Court Clerk