



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL SUIT NO.156 OF 2008

NABEA ACADEMY LIMITED.....PLAINTIFF

VERSUS

KENYA NATIONAL ASSURANCE CO. (2001) LTD.....DEFENDANT

J U D G E M E N T

The Plaintiff filed this suit on 28.11.2008 and in its plaint prayed for judgment against the Defendant as follows:-

(a) An order of injunction do issue restraining the Respondent, its employees, servants and/or agents from in any way or howsoever proceeding with the sale of the Applicant's school premises and plot known as L.R No. Ntima/Igoki/611 & 778 – Meru Municipality purportedly under Chargor's Statutory right of sale.

(b) A declaration that the plaintiff does not owe any money or obligation to the defendant.

(c) Costs of the suit and interest.

The law firm of C. B. Mwangela & Co, advocates, which firm was acting for the plaintiff filed an application to cease acting for the plaintiff dated 3.4.2014. When the application was to be heard interpatas, Mr. Nyenyire holding brief for Mr. Maganga for the Plaintiff informed the Court that Mr. Mwangela had by a Notice dated 26.6.2014 withdrawn the application dated 3.4.2014 and asked the Court to mark it as settled. I have seen this Notice. I, therefore, mark the application as settled with no order as to costs.

Mr. Nyenyiere then referred the Court to a letter written by the firm of C. B. Mwangela, Advocates, and dated 5.6.2014. The letter addressed to the Deputy Registrar, High Court of Kenya, Meru States:

“Please refer to the captioned matter in which we act for the plaintiff and which is scheduled for mention on 2.7.2014. Kindly note that the Plaintiff and the Defendant reached an out of Court settlement between themselves and the matter may now be marked as settled”.

The letter is copied to the firm of M/s Waweru Gatonye & Co. which represents the Defendant.

Mr. Nyenyire asked the Court to mark the suit as settled with parties bearing own costs.

From the Court records the parties were in Court on 4.12.2008 before the Hon. Justice Emukule, J. The next time one of them the plaintiff, appeared in Court for directions was on 28.5.2014, five and a half years later. It is clear that this would have been a veritably proper suit where parties should have been

required to show cause why it should not have been dismissed for want of prosecution. Be it as it may, the Plaintiff is seeking to have the suit marked as settled on the ground that the parties have reached a settlement. In other words, he seeks to wholly discontinue the suit against the sole Defendant.

Order 25 Rule 1 decrees:

“At any time before the setting down of the suit for hearing the plaintiff may be by notice in writing, which shall be served on all parties, wholly discontinue his suit against all or any of the defendants or may withdraw any part of his claim, and such discontinuance or withdrawal shall not be a defence to any subsequent action.”

This suit has not been set down for hearing.

I find that the Plaintiff has complied with the requirement regarding discontinuance of the suit in whole. This suit is therefore marked discontinued. The Plaintiff may not return the suit to Court. I make no finding as to costs.

It is so ordered.

Delivered in Open Court at Meru this 2nd day of July, 2014 in the presence of:

Cc Lilian/Daniel

Nyenyire h/b Maganga for Plaintiff

Firm of Waweru Gatonye for defendant Absent

P. M. NJOROGE

JUDGE