



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**MISC. APPLICATION NO. 809 OF 2011**

**IN THE MATTER OF ARBITRATION BETWEEN**

**LOIS MVULI SEMENYE.....APPLICANT**

**-VERSUS-**

**HENDRED PROPERTIES LIMITED.....RESPONDENT**

**RULING**

1. On **9<sup>th</sup> June 2014**, the Court on its own motion issued a Notice to Show Cause under **Order 17 Rule 2** of the **Civil Procedure Rules**. The Applicant was required to show cause why the suit should not be dismissed for want of prosecution. The Notice to show cause was fixed for hearing on **25<sup>th</sup> July 2014**.
2. In response, the Applicant filed an undated affidavit on **24<sup>th</sup> July 2014** and sworn by SAMUEL MAINA KARANJA, an Advocate of the High Court of Kenya. When the matter came up for hearing, Counsel for the Applicant submitted to the Court that he was relying on the aforesaid Replying Affidavit.
3. In the said affidavit, the Advocate essentially depones that they had attempted to fix this matter for hearing to no avail as the file could not be traced. The Applicant relies on their letter dated **13<sup>th</sup> May 2013** and addressed to the Respondent's Advocates, in which they were requesting the Respondent's representative to meet theirs at the High Court Registry for purposes of fixing a hearing date. On the face of the said letter, are the handwritten words "File not available". It is therefore the Applicant's case that they could not fix this matter for hearing as the file could not be traced.
4. As regards the issue of the file herein being lost or not available, there is no evidence on the Court record to support the same. The letter the Applicant is relying on was not addressed to this Court but to the Respondent's Advocates. Moreover, the said letter does not have the stamp of this Court and therefore it is inconceivable that the words "file not available" were written by an officer of this Court.
5. In the event that the file was indeed lost, the prudent thing to do was to apply to the Court for a reconstruction of the said file. The Applicant or his Advocates did not do so. The application that was to be set down for hearing is the Chamber Summons dated **27<sup>th</sup> September 2011** and filed in Court on **28<sup>th</sup> September 2011**. That is the last time the Applicant took steps to prosecute this matter. The Notice to Show Cause is dated **9<sup>th</sup> June 2014**, almost two and a half years after the Chamber summons was filed.
6. As regards Notice To Show Cause, **Order 17 rule 2 (1)** of the **Civil Procedure Rules** states thus:-

**(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. *Underlining supplied***

7. In relation to the above provision, it is clear that the Applicant herein has not taken any steps to prosecute the current application for more than a year. In addition, no sufficient reasons have been given for the failure to do so. In the circumstances, the order that commends itself to this Court is to dismiss the current application with costs.

Orders accordingly.

Dated, Read and Delivered at NAIROBI this 3<sup>rd</sup> Day of October 2014.

**E.K.O OGOLA**

**JUDGE**

**Present:-**

Muema holding brief Kinyanyui for Plaintiff/Applicant

Absent for Defendant/Respondent

Teresia – Court clerk