



REPUBLIC OF KENYA

High Court at Embu

Civil Case 69 of 2002

NJIRU BUILDING CONTRACTORS LTD.....1ST PLAINTIFF

DAVID NDWIGA NJIRU2ND PLAINTIFF

VERSUS

CO-OPERATIVE BANK OF KENYA LTD..... DEFENDANT

RULING

This is the chamber summons dated 17/5/2012 brought under Order 17 rule 2 (1)&(3) Civil Procedure Rules section 1A, 1B and 3A Civil Procedure Act for the following orders;

- 1. That the suit herein be dismissed with costs for want of prosecution.**
- 2. That the Plaintiffs be condemned to pay costs of the application.**

The main reason is that the Plaintiffs have failed, refused/or neglected to prosecute this suit for a period of over one (1) year causing the Defendant unnecessary anxiety. Its supported by the affidavit of MAYIEKA N. GESUMWA through which he reiterates the grounds.

The 2nd Defendant filed a replying affidavit outlining efforts made to have the matter fixed for hearing. The main barrier has been the congested diary. Both Counsels agreed to dispose of the application by way of written submissions. The Defendants feel that the Plaintiff who are in possession of interim orders preventing sale are not keen of moving the case. I have not traced the said orders and when they were issued. I have seen the record and I have heard both Counsels through their submissions.

This is a case of 2002. The last substantive orders on this matter were issued on 11/5/2011 when the Court directed the parties to comply with Order 11 Civil Procedure rules within 60 days with a mention on 20/7/2011. Come 20/7/2011 only Mr. Okwaro for Plaintiff was present and he requested for a further mention which was given as 5/10/2011. That marked the end of the story on Order 11 Civil Procedure Rules and then the present application was filed.

A perusal of this file does not show the filing of any witness statements, lists and copies of exhibits. The Plaintiffs are claiming that they could not get dates because of the congested diary. It is true the diary for this Court has been congested for reasons best known to all of us. However my question is whether this case is ripe for hearing. A matter can only be said to be ripe for hearing after due compliance with the Rules.

I however must point out to the Plaintiffs that this is their case and they are indeed inconveniencing the

Defendant. If there was a directive that only matters filed before 2005 could be heard why was this one not heard yet it was filed in 2002?

I am in agreement with the Defendant/Applicant that there is deliberate delay by the Plaintiffs. However because of the issues raised concerning the congested diary I will give them the benefit of doubt and disallow the application. I however direct the parties to comply with Order 11 Civil Procedure Rules in the following manner;

- 1. The Plaintiff to file and serve their list of witnesses, witness statements, exhibits and any other documentary evidence within 14 days.**
- 2. The Defendant to do the same within 14 days after service.**
- 3. Agreed issues to be filed within 14 days after the Defendant's filing of their lists in number 2.**
- 4. Mention on 12/6/2013 for trial conference and/or directions.**

Costs to the Defendant/Respondent.

DATED AND DELIVERED AT EMBU 6TH THIS DAY OF MAY 2013.

**H.I. ONG'UDI
J U D G E**

**In the presence of;
Mr. Okwaro for Plaintiff/Respondent
Njue – C/c**