



REPUBLIC OF KENYA

High Court at Mombasa

Civil Case 258 of 2006

COAST WATER SERVICES BOARD

LTD.....PLAINTIFF

VERSUS

1. TIBA FREIGHT FORWARDERS LIMITED

2. ZAISCO CONSTRUCTION COMPANY LIMITED

3. MOHAMMED

SOMO.....DEFENDANTS

Coram:

Mwera J.

Mrs. Juma for Plaintiff/Respondent

Mogaka for 1st Defendant/Applicant

N/A for 2nd and 3rd Defendants

Court Clerk Furaha

RULING

By a notice of motion dated 27th July, 2012 the 3rd defendant sought orders under Order 17 rule 2 (1) (3) Civil Procedure Rules and section 3A of Civil Procedure Act:

(i) that the plaintiff's suit herein be dismissed for want of prosecution.

One ground put forth was to the effect that the plaintiff had not taken any steps since 1st October, 2007 to move the suit to trial. And in short supporting affidavit, Mr. W. Mogaka the applicant's advocate deponed that the 1st and 3rd defendants filed their defence(s) on 18th December, 2006, the 2nd defendant having done so on 15th December, 2006. Thus pleadings closed, it can be said. That the plaintiff's side has since taken no steps to prepare the suit, for trial despite reminders by the defendant's lawyers (annexure WM 1). That has caused denial of justice – hence the present application.

In a replying affidavit sworn on 14th September, 2012 Engineer James Thubu, CEO of the plaintiff board stated on authority, that the defendants heavy works breached the plaintiff's way leave on plot No. MN/V/1902, prompting filing the suit herein on 12th November, 2006 along with an injunction application. The ruling in that application was delivered on 19th July, 2007. That to prepare the suit for trial, the plaintiff was obliged to liaise with several ministries and other bodies/corporations (see annexure JWG. 3) whose responses took long in coming. Accordingly, it was not the plaintiff's deliberate move to delay prosecution. The orders sought ought not to issue. That will enable parties to ventilate the merits of the case at a trial.

Having perused the application, the affidavits and heard verbal submissions of counsel, this court is minded to order and it orders that this suit do go for trial. That way the issues in dispute will be properly and finally determined. Accordingly, parties are granted thirty (30) days in which to file/serve witness statements, bundles of paginated documents to be relied on plus sets of issues. On a mention date thereafter, the court will give directions as regards hearing dates.

Orders a accordingly. Costs in the cause.

Delivered on 2nd October, 2012.

J. W. MWERA

JUDGE