



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL CASE NO. 455 OF 2015

FIRST MANZI ROAD LIMITED.....1ST PLAINTIFF

SECOND MANZI ROAD LIMITED.....2ND PLAINTIFF

THIRD MANZI ROAD LIMITED.....3RD PLAINTIFF

FORTH MANZI ROAD LIMITED.....4TH PLAINTIFF

FIFTH MANZI ROAD LIMITED.....5TH PLAINTIFF

SIXTH MANZI ROAD LIMITED.....6TH PLAINTIFF

=VERSUS=

NAIROBI COUNTY GOVERNMENT.....1ST DEFENDANT

SONY HOLDINGS LIMITED.....2ND DEFENDANT

NATIONAL LAND COMMISSION.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

THE CHIEF LAND REGISTRAR.....5TH DEFENDANT

RULING

1. This is the Notice of Motion dated 21st September 2017 brought under Order 17 Rule (2) (1) and (3) of the Civil procedure rules. It seeks orders that the plaintiffs' suit be dismissed for want of prosecution and that the cost of the application and the entire suit be borne by the plaintiffs.
2. The grounds are on the face of the applicant and are set out in paragraphs a to d.
3. The application is supported by the affidavit of Alex Trachtenberg, a director of the 2nd defendant/applicant sworn on the 21st September 2017.
4. The application is opposed. There is a replying affidavit sworn by Hitenkumar Amritlal, the managing director of the plaintiffs/respondents sworn on the 16th November 2017.
5. I have considered the notice of motion, the affidavit in support and the replying affidavit. The issue for determination is whether this application is merited.
6. I have considered the rival averments in the two affidavits. In paragraph 12 of the replying affidavit the managing director of the plaintiff deposes:-

“That the said representative by the name Mr. Ndirangu came back to court and in the attendance sheet dated the 10th August 2017 indicated that the file could not be traced and that he was asked to go back on the 13th August, 2017 on which date he was

told the file had still not been traced. (attached and marked 'HA3' is a copy of the said attendance sheet)."

I find that these averments have not been rebutted and so are the averments in paragraph 13 of the said affidavit.

7. I have considered the circumstances in this case and find that the plaintiffs have given a reasonable explanation for the delay. I find that they deserve an opportunity to prosecute their case to conclusion.

8. The upshot of the matter is that I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit. The plaintiffs should however expeditiously set down this suit for hearing so that the issues can be determined once and for all.

It is so ordered.

Dated, signed and delivered in Nairobi on this 30TH day of JANUARY 2019.

.....

L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiffs

.....Advocate for the Defendants

.....Court Assistant