



**REPUBLIC OF KENYA**

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

**MILIMANI COMMERCIAL &ADMIRALTY DIVISION**

**CIVIL CASE NO. 171 OF 2009**

**PARAGON ELECTRONICS LTD:.....:PLAINTIFF**

**-VERSUS-**

**SAMSUNG ELECTRONICS LTD:.....:DEFENDANT**

**R U L I N G**

1. The application before the court is a **Notice of Motion** dated **14th August 2014**. It is filed under Order 17 Rule 2 (3) of the Civil Procedure Rules 2010 and Section 3A of the Civil Procedure Act. The application seeks the main prayer that the suit herein be dismissed for want of prosecution, on the basis that it is now over one (1) year since the Plaintiff/Respondent made any attempts to prosecute the suit, and that it is only just and fair that the suit be dismissed.

2. The application is supported by affidavit of **Doreen Mutunga** filed in court on **2nd September 2014**.

3. The application is opposed vide a Replying Affidavit of **Bulent Gulbaher** dated **22nd September 2014**.

4. I have considered the application and the opposing affidavits. It is true that the last action on the matter was on 28th March 2013 when the Plaintiff listed the matter for hearing on 3rd June 2013. The hearing never took off as the matter appears not to have been listed. However, it is clear that the Plaintiff has not been idle enough to warrant the dismissal of suit. The Plaintiff appointed its current advocates who have made efforts to have the matter listed for hearing but those efforts have not yielded any fruit. I will give the Plaintiff another chance.

5. Pursuant to the foregoing, the application dated 14th August 2014 is dismissed. However, for their efforts the Defendant/Applicants shall have costs herein assessed at Kshs.7,000/- to be paid before the matter is listed for hearing in the next 45 days.

Orders accordingly.

**DATED, READ AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER 2014**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

Wandanda holding brief for Muriithi for the Plaintiff/Applicant

M/s Mutunga for the Defendant/Respondent

Irene – Court Clerk



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