

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 212 OF 2012

NASSAR MOHAMED A. BAYUSUF1ST PLAINTIFF

M. A. BAYUSUF & SONS LIMITED 2ND PLAINTIFF

V E R S U S

FADHIL MOHAMED BAYUSUF 1ST DEFENDANT

YUSUF MOHAMED BAYUSUF 2ND DEFENDANT

AHMED MOHAMED BAYUSUF 3RD DEFENDANT

IQBAL BAYUSUF 4TH DEFENDANT

RULING

1. As I began to consider today's Ruling it became apparent to me that on 14th May 2014 this matter was fixed for mention on 16th June 2014 with a view to the Court receiving parties consent, if any.
2. On 16th June 2014 only the Plaintiffs and 2nd Defendants were present in Court. There was no representation for 1st, 3rd and 4th Defendants.
3. Parties present on that day informed the Court that negotiations had not borne any fruit and that there was no consent to record.
4. On parties requesting the Court for Directions about the hearing of 2nd Defendant's Preliminary Objection dated 11th December 2013 the Court proceeded to give a date of Ruling of that Preliminary Objection. In hind-sight it was not right to proceed to give a date for ruling without hearing all the parties. The parties who were absent on that day may have absented themselves in the belief that the matter was only coming up for mention, and not for hearing.
5. Because of the above observation I will today proceed to give the parties a hearing date of the Preliminary Objection after which another date of Ruling will be given.
6. It is on that basis that on the Court's own motion and in the interest of justice the order of 16th June 2014 is hereby set aside and vacated. It is substituted by an order that a date be fixed for the hearing of the Preliminary Objection.

It is so ordered.

DATED and DELIVERED at MOMBASA this 31ST day of JULY, 2014.

MARY KASANGO

JUDGE