



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
HCCC NO. 388 OF 2002

COMMERCIAL SPARES LIMITED :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

AL NAKHIL ENTERPRISES LIMITED :::::::::::::: 1ST DEFENDANT

HASSAN ABUDLATIFF MOHAMED :::::::::::::: 2ND DEFENDANT

R U L I N G

1. The application before the court is a **Notice of Motion** dated **29th September 2009**. The application seeks orders:-
 1. ***That the suit be dismissed for want of prosecution.***
 2. ***That the costs of this application be provided for.***
2. The application is premised on the grounds set out therein and is supported by **affidavit** of **OSBORNE LIJOODI** dated **29th September 2009**.
3. The application is not opposed. It was served upon the Respondents. The Hearing Notice for hearing on 3rd June 2014 was also served upon the Respondents. An affidavit of service was filed in court on 3rd June 2014 to prove the same.
4. The brief facts of the application are that The current suit was filed on 28th March 2002 in Nairobi as HCCC Number 2962 of 1997 against the Defendants. Together with the suit was an application for injunction which was scheduled for hearing on 20th December 2002 but which hearing did not take off. On 28th July 2003 when the said application was to be heard, it again did not take off. The application was finally listed for hearing on 30th July 2003 but again the same did not take place.
5. It is alleged that since 30th July 2003 the Plaintiff has not set down the application for hearing and more than ten (10) years have since elapsed without any action on the matter. It is on this basis that this application to dismiss the suit is now made to this court.
6. I have considered the application. It is not opposed. Again, under Order 17 Rule 2 this court has the discretion to dismiss a suit for want of prosecution. Under sub rule (3), the Defendant has a right to bring this application. I believe the application is merited and should be granted.
7. In the upshot, the Notice of Motion application dated 29th September 2009 is allowed and the suit herein is herewith dismissed with costs to the Defendants.

Orders accordingly.

DATED, READ AND DELIVERED AT NAIROBI

THIS 25TH DAY OF JULY 2014

E. K. O. OGOLA

JUDGE

PRESENT:

No appearance for Plaintiff

No appearance for the Defendants

Teresia – Court Clerk