

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 1078 of 2004

IRENE NECHESA SHIMWENYI

MESHACK SHIMWENYI suing as the legal representatives

of the estate of MACKLINE KHABAKALI. PLAINTIFFS

VERSUS

GICHUKI GITIHI. 1ST DEFENDANT

DR. GEORGE GODIA. 2ND DEFENDANT

R U L I N G

This court, by a ruling made by Sitati, J dated 3rd December, 2011, allowed the Applicant/Plaintiff therein to make certain amendments and carry out certain procedures within 30 days. The court expressly stipulated that if such amendments and processes were not carried out as ordered, the whole suit would stand dismissed.

Furthermore, on 4th October, 2010 the firm of advocates, M/s Khaminwa & Khaminwa Advocates who before then were acting for the plaintiff, were replaced by a Notice of Change of Advocates filed by M/s A. S. Kuloba & Wangila Advocates, who thereafter took over the conduct of the suit.

What the above events demonstrate, is that by the date M/s Khaminwa & Khaminwa Advocates filed the application by way of a Notice of Motion dated 15th August 2012 (or is it 10th August, 2012), seeking stay of execution, they were not the advocates on the suit record and had therefore no authority in law to file the Notice of Motion aforesaid. That, in my view, rendered the said application incompetent for all purposes.

On the other hand, the suit as ordered by Sitati, J in her ruling dated 3rd December, 2011, was to stand dismissed after 30 days of the said order, if the plaintiff did not carry out the ordered or authorized amendments within the said period. The claim and submissions by the Defendant that the Plaintiff failed to carry out the authorized amendments, was not denied by the plaintiff. Indeed the allegations were admitted by Mr. Mutisya holding M/s Khaminwa's brief. In the circumstances, the court declares that suit stood dismissed as ordered by Sitati J, at the expiration of 30 days thereafter.

As also submitted by the Defendant, there was no existing suit under which the Plaintiff would purport to file the Notice of Motion application dated 15th August, 2012. This court entirely concurs with the position. This court, therefore, has no justiciable basis upon which it can presently visit the dismissed suit. The court accordingly orders the file closed with costs.

Dated and delivered this 9th day of November, 2012.

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D A ONYANCHA

JUDGE