



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURT COMMERCIAL AND TAX DIVISION)
CIVIL CASE NO. 1888 OF 2001

FIRST ASSURANCE COMPANY LTD.....PLAINTIFF
VERSUS
KINGSGATE INSURANCE BROKERS
LTD.....DEFENDANT

R U L I N G

By a notice dated 25th February, 2010, the Advocates for the respective parties herein were requested to appear in Court and Show Cause why the suit should not be dismissed under **Order XVI Rule 2 (1)** of the **Civil Procedure Rules**.

In a replying affidavit thereto, the Plaintiff's Advocate, Ms. Kahoya, conceded that she was aware that this matter had been last in Court on 3rd December, 2002. She further deposed that she was aware that the Defendant Company closed its operations, and the Plaintiff did not proceed with the case due to the remote chances of the Defendant's recovery. In a nutshell, the only reason for not taking a hearing date was as a result of the closure of operations by the Defendant.

On her part, Ms. Chege for the Defendant supported the dismissal of the suit under **Order XVI Rule 2 (1)** with the judgment on the counterclaim.

Order XVI Rule 2 (1) of the **Civil Procedure Rules** states as follows –

“In any suit in which no application has been made or step taken by either party for one year, the Court may give notice in writing to the parties to Show Cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”

It is evident from Ms Kahoya's affidavit that the Plaintiff is not keen on proceeding with this matter because of the closure of operations by the Defendant, and the latter's remote chances of recovery. Although the Defendant itself has a counterclaim, which is taken in law as a plaint in its own right, the Defendant should also have taken steps to advance its cause regarding that counterclaim. However, it did not do so for more than seven years. Each party has a responsibility to take action to progress the matter, but none of them did so in this suit.

In these circumstances, I find that both parties are equally to blame, and that no good reason has been advanced for maintaining this suit. It is accordingly dismissed under **Order XVI Rule 2 (1)**. For the same reasons, the counterclaim is also dismissed. Each party will bear its own costs.

Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this 13th day of April, 2011.

L. NJAGI

JUDGE