

MOIZ HASSAN NATHOO

T/A T & S INTER TRADE PLAINTIFF

VERSUS

HARVEEN GADHOKE 1ST DEFENDANT

SHAMASH & BROTHERS LIMITED 2ND DEFENDANT

THE HON. THE ATTORNEY GENERAL 3RD DEFENDANT

COURT RULING

This matter was listed for hearing on 7th October 2009. The company of Anjarwalla and Khanna Advocates who were on record for the 1st Defendants took this date on an ex-parte basis in the Courts Registry. On the hearing date Mr. Khanna Advocate was present in court and ready to proceed on behalf of his client the 1st Defendant. There was no appearance by the Plaintiff/Applicant and likewise no appearance by the 2nd Defendant or by the Hon. Attorney-General. I have perused the court file and I note that all these parties were properly served with the hearing date. Their absence is totally unexplained.

I further note from a perusal of the court file that this suit was first filed in court on 10th August 2001. Despite their having obtained interim orders under certificate of urgency the Plaintiff/Applicant has taken no steps at all to prosecute their suit. By a Notice of Motion dated 1st September 2008 and filed in court on 2nd September 2008 the firm of Taib and Taib Advocates who were on record for the Plaintiffs applied to cease from acting on the grounds that they had been unable to contact their client in order to receive instructions in the matter. This is clear evidence that the Plaintiff has abandoned their suit. The hearing date of 7th October 2009 was taken not by the Plaintiff but by the 1st Defendant. Despite having been properly served the Defendant still failed to appear in court to prosecute their suit. The suit belongs to the Plaintiff. This court will not force or plead with them to prosecute the same. From August 2001 no action has been taken to prosecute the suit. That is a period of 8 years to date. In my view this amounts to inordinate delay. In the circumstances I find that O. 9B r.4 is applicable and I hereby dismiss this suit in its entirety with costs to the 1st Defendant.

Dated and Delivered at Mombasa this 23rd day of October 2009.

M. ODERO

JUDGE

Read in open court in the presence of:

Mr. Koech holding brief for Mr. Khanna for 1st Defendant

No appearance by Plaintiff

No appearance by Attorney General

M. ODERO

JUDGE

23/10/2009