

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 1098 of 2002

STRIPES INDUSTRIES LIMITED.....PLAINTIFF

VERSUS

BLACK AND BEAUTY PRODUCTS LIMITED.....DEFENDANT

RULING

A notice to show cause why this suit should not be dismissed under Order 16 Rule 2(1) came up for hearing on 13th November 2009. The defendant supported the notice to have the suit dismissed for want of prosecution. However, counsel for the plaintiff swore an affidavit explaining why the matter has not proceeded for hearing is principally because the court diary for 2010 has just been opened and counsel was making arrangements to have the suit fixed for hearing. Secondly, the suit involves the determination of trade mark and it is in the interest of justice that this suit be fixed for hearing.

This suit was filed in September 2002; the record shows no steps have been taken since September 2004 to prosecute the matter. The record reveals that in July 2004, the defendant filed a notice of motion seeking to have this suit dismissed for want of prosecution. Although counsel for the plaintiff contends that he was making arrangements to have this suit fixed for hearing, those efforts are not supported by any evidence. There is not even a letter inviting the other side for fixing. Similarly, he claims that the court diary was unavailable; this is also not borne out of the record because there are no requests made to the court and to the other side requesting or inviting them to attend court for fixing of hearing dates.

It is in the interest of justice and also a legitimate expectation borne out of public interest that parties who file suits in court will move expeditiously to have them disposed of. The continued pendency of this suit not only clogs the court system, but prejudices a defendant who has to worry about preserving their defence evidence years on end. There is no cause shown why this suit should not be dismissed for want of prosecution. I so order it be dismissed with costs to the defendant.

Ruling read and signed on 27th November, 2009

M. KOOME

JUDGE