



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MOMBASA

Civil Suit 316 of 2007

KHALEF KHAMIS AHMEDPLAINTIFF

VERSUS

ASHVINKUMAR C. DOSHI

JAYPRAKASH C. DOSHIDEFENDANTS

RULING

I have considered the Notice of Withdrawal and the submissions by consent. The court had ordered that the plaintiff do attend court personally to be examined on his affidavit sworn on 30.10.09.

The plaintiff did not attend court today but instead filed a notice of withdrawal of the suit. His counsel Mr. Ojode confirms that the plaintiff is actually in Hong Kong as stated earlier. The court did not accept that plaintiff could have been in Hong Kong on 29.10.09 since the affidavit was sworn on 30.10.09.

The foregoing proves that in fact the signature of the plaintiff on the affidavit is a forgery. The plaintiff could not have signed since he was in Hong Kong a fact which I now believe.

As pointed out by Mr. Nanji that while Counsel and court are not handwriting experts, the signature in the affidavit and those of plaintiff in other documents including the verifying affidavits are totally different. The signature on the affidavit is a forgery. Someone procured it at the instance of the plaintiff. This act amounts to perjury and contempt of this court.

I do hold that the plaintiff is in contempt of this court. The plaintiff cannot be allowed to exit from this suit without appropriate pudging of the contempt. He otherwise must be punished.

Under Order 24, rule II, the plaintiff has the right to file another suit. The plaintiff is likely to file another suit and the Notice of withdrawal is to escape facing perjury charges and contempt proceedings. This court shall not make it easy for him. What he did is wholly unacceptable and shall not be allowed by this court to go unpunished.

In exercise of this court's jurisdiction and discretion I do hereby strike out the Notice of Withdrawal of the suit. As punishment to this plaintiff for contempt of court, I do hereby dismiss the suit with costs to

the defendant.

Orders accordingly.

Dated and delivered at Mombasa this 6th day of November 2009.

M. K. IBRAHIM

J U D G E

In the presence of Mr. Kanji for defendant and Mr. Ojode for the plaintiff.