

RAJESH JAMNADASS.....PLAINTIFF/RESPONDENT

-VS-

TOBIAS ODHIAMBO OKETCH.....DEFENDANT/APPLICANT

RULING

Upon considering carefully what has been brought to my attention during the hearing of this Notice of Motion dated 4th May 2007 wherein the Applicant is praying that the Plaintiff's suit herein be dismissed with costs for want of prosecution there having been inordinate delay for four years which the Respondent says should be reduced to two years, the said Notice of Motion is hereby granted with costs to the Applicant for the following reasons.

Firstly, there is no evidence that the Advocate for the Plaintiff and the Advocate for the Defendant have ever been involved in negotiation to settle this suit out of Court.

Secondly and following from the above, the evidence relied upon by the Respondent herein to claim there was an attempt to settle this case out of Court is hearsay and inadmissible before me.

Thirdly, since the Respondent relies entirely upon an alleged offer by the Applicant without indicating any response to that offer, the Respondent relies on a lame excuse .

The delay to prosecute the suit may not be four years as alleged by the Applicant but even if it is accepted that the delay is two years, the Respondent has not given sufficient explanation to make him escape the legal sanction in Order XVI Rule 5(a) of the Civil Procedure Rules.

Dated and Delivered at Nairobi this 21st day of February, 2008.

J.M. KHAMONI

JUDGE