

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 973 of 2003

HASSAN MAGIYA KIAGE.....PLAINTIFF/RESPONDENT

VERSUS

DE LA RUE CURRENCY &

SECURITY PRINT LTD.....DEFENDANT/APPLICANT

RULING

In this Notice of Motion dated 31st October 2007 praying for the dismissal of the Plaintiff's suit herein for want of prosecution on the ground that more than one year has elapsed since the matter was stood over generally by the Court in January 2006, no replying affidavit has been filed by the Plaintiff and therefore legally the Notice of Motion remained unopposed.

But during the hearing before me, surprisingly Mr. Omondi as Counsel for the Applicant, raised no objection to the appearance of Mr. Mugire who said was appearing for the Plaintiff/Respondent and went ahead to address me in reply to submissions by Mr. Omondi before I realized that no replying affidavit had been filed and Mr. Mugire was not from the Law firm of S.M. Gwaro, Advocate on record as representing the Plaintiff in this matter and served as stated in the Applicant's Affidavit of service dated 9th November 2007 and filed on 23rd November 2007.

Mr. Mugire told me he came in this case the last week of January 2008. He claimed to have filed a notice of change of Advocates which I do not see in this case Court file. In the circumstances therefore all that Mr. Mugire told me during the hearing of this Notice of Motion is not only hearsay but also stated by an incompetent Advocate and therefore of no legal effect upon what Counsel for the Applicant told me.

Accordingly, the Notice of Motion dated 31st October 2007 is hereby granted as prayed.

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

J.M. KHAMONI

JUDGE