

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Suit 340 of 2000

JANE NJOKI MUHIA & OTHERS PLAINTIFFS

- Versus -

ENOCK B. MARANGA 1ST DEFENDANT

WOODVENTURE (K) LIMITED 2ND DEFENDANT

R U L I N G

By this application, the 2nd Defendant seeks orders that this suit be dismissed for want of prosecution with costs in the cause.

The application is brought by notice of motion under Order XVI rule 5 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act. It is supported by the annexed affidavit of SHUJAUDIN KASSAM SALYANI, the General Manager of the applicant company, and is founded on the grounds that the suit has never been prosecuted for more than one year, and that there is no jurisdiction for the idle stay of the suit.

On the day fixed for the hearing of the application, Mr. Mulika appeared for the applicant while Mr. Mabeya appeared for the 1st Plaintiff in HCCC No. 352 of 2000 which had been consolidated with the present suit. All the Advocates for the other parties had been served, and there is on record and affidavit of service to that effect, but none of them attended. Being satisfied that they were all served in sufficient time to attend, the court proceeded ex parte.

Replying on the supporting affidavit referred to above, and on the authority of EVALINE CHEPKOSKEI RONO & ANOR. v. NATIONAL BANK OF KENYA HCCC No. 66 of 2005 (Nakuru), Mr. Mulika submitted that the application was unopposed and urged the court to dismiss the suit against the applicant since it is more than one year since the matter last came to court. Mr. Mabeya informed the court that he had tried everything possible to establish contact with his client over the last few years but all his efforts went begging. One can only sympathise with Mr. Mabeya who demonstrated a keen interest in the matter but could not proceed without his client's instructions.

It is significant that none of the respondents filed either a replying affidavit or grounds of opposition. Apart from Mr. Mabeya, none of the other advocates or litigants attended. This was a clear manifestation of sheer apathy on their part. Their disinterest in the matter is amply demonstrated by their failure to oppose the application.

Since the application is unopposed, the applicant is entitled to the orders as prayed. The suit against the 2nd defendant is accordingly dismissed for want of prosecution. The costs of this application will be in the cause as prayed.

Dated and delivered at Mombasa this 30th day of May, 2008.

L. NJAGI

JUDGE