

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

Civil Case 1218 of 2001

SOLOMON KIRAGU THANDE
PLAINTIFF

V E R S U

1. CO-OPERATIVE MERCHANT BANK LIMITED

2. JOSEPH GIKONYO (T/a Garam Investments)
DEFENDANTS

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

This is an application by the 1st Defendant (by notice of motion dated 6th February, 2006). It seeks under Order 16, rule 5 (d) of the Civil Procedure Rules (the Rules) an order for dismissal of the Plaintiff's suit for want of prosecution. It is alleged that the Plaintiff has failed to prosecute the suit since 15th December, 2004 without any reasonable or just cause. The application is supported by an affidavit sworn by ICHAU MUTAHI, the 1st Defendant's learned counsel.

The Plaintiff was duly served with the application on 9th March 2006. He did not file any papers in response thereto. The application is therefore unopposed.

I have perused the record of court. The suit was last in court on 15th December, 2004 for hearing. It was stood over generally upon the Plaintiff's application. The Plaintiff was ordered to pay court adjournment fees. Since that date the Plaintiff has not set the suit down for hearing.

I am satisfied from the supporting affidavit that the 1st Defendant tried to set down the suit for hearing. Its efforts in that regard were frustrated by the Plaintiff's failure to pay the court adjournment fees ordered on 15th December, 2004. The 1st Defendant therefore elected to make the present application.

As already observed, the Plaintiff did not file any papers to the present application. Again, as already observed, the Plaintiff has not taken any step since 15th December 2004 to set down the suit for hearing. In the circumstances of this case, this delay is prolonged and inexcusable as there has not been any explanation for it. I am satisfied, in the circumstances, that the Plaintiff has lost interest in the suit. It should not be permitted to hang over the Defendant's head indefinitely.

In the result I will allow the application. The Plaintiff's suit be and is hereby dismissed with costs to the Defendants for want of prosecution. Orders accordingly.

DATED AT NAIROBI THIS 28TH DAY OF AUGUST 2007.

H. P. G. WAWERU

J U D G E

DELIVERED THIS 31st DAY OF AUGUST, 2007