

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION

CIVIL CASE 1497 OF 1996

BASIL CRITICOS (Alias VASSILIS CRITICOS).....PLAINTIFF

V E R S U S

1. AGRICULTURAL FINANCE CORPORATION

2. SHARIFF ALWI AHMEDDEFENDANTS

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 for an order to dismiss the Plaintiff's suit against it for want of prosecution. It is by notice of motion dated 24th August, 2005 brought under Order 16, rule 5(d) of the Civil Procedure Rules (the Rules). Under that rule, if, within three months of the adjournment of the suit generally, the plaintiff, or the court of its own motion on notice to the parties, does not set down the suit for hearing, the defendant may do so or apply for its dismissal. There is a supporting affidavit from the Defendants' advocate, WINFRED WANJAMA.

It is said that since 7th November, 2000 the Plaintiff has never taken any step towards prosecution of the case. On that date, the matter had come up for directions; it was stood over generally at the instance of the Plaintiff's counsel.

The Plaintiff was duly served with the application. He did not file any grounds of opposition or relying affidavit; nor was there any appearance for him at the hearing of the application. The application is therefore unopposed.

I have considered the submissions of the learned counsel for the 1st Defendant. I have also perused the record of the court. The present application was filed on 25th August, 2005. Before then the suit had come up on 7th November, 2000 for directions on how hearing should proceed; it was stood over generally. Since then the Plaintiff has not set the suit down for hearing. There has been a delay of nearly five (5) years. This is inordinate. No explanation has been offered for the delay, which is therefore inexcusable.

It is apparent that the Plaintiff has lost interest in this suit. It is hereby dismissed under Order 16, rule 5(d) of the Civil Procedure Rules, with costs to the Defendants. There will be orders accordingly.

DATED AT NAIROBI THIS 10TH DAY OF SEPTEMBER, 2007

H. P. G. WAWERU

JUDGE

DELIVERED THIS 14TH DAY OF SEPTEMBER, 2007