



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 227 of 1998

JYOTSNA DHANANIPLAINTIFF

VERSUS

1. NITIN K. PANDYA

2. COAST COMPUTER BUREAU LTD.DEFENDANTS

R U L I N G

Nitin Pandya and Coast Computer Bureau Ltd., being the 1st and 2nd defendants herein took out a motion pursuant to order XVI rules 5 and 6 of the Civil Procedure Rules in which they sought for the suit to be dismissed for want of prosecution. The motion is supported by an affidavit sworn by Nitin Pandya.

When served with the Motion, Jyotsna Dhanani, the Plaintiff herein, filed the affidavit of Jyotsna Dhanani to oppose it.

Mr. Lutta, the defendants' advocate urged this court to dismiss the suit because the plaintiff failed to take steps to prosecute the suit since 19th March 1999 when directions were given. It was his submission that the plaintiff may have lost interest to pursue this suit. The defendants have complained that the continued pendency of the suit is costly and expensive to them hence it is to the best interest of justice to dismiss the suit.

In response, the plaintiff blamed his previous advocate for the delay in prosecuting the matter. The plaintiff urged this court to spare the suit because he is now interested to prosecute the matter.

There is no dispute that this suit was filed on 3rd July 1998 by way of plaint in which the plaintiff claimed for interalia: damages for libel plus costs against the defendant arising out of a defamatory letter dated 4.7.97 allegedly written and signed by Messrs Anjarwalla Abdulhussein & Co. Advocates on behalf of the plaintiffs. The summons plus the plaint were served and a memorandum of appearance and a defence were filed on the 24th July 1998 and on the 11th day of August 1998 respectively. It is admitted that directions were taken on the 19th day of March 1999 and nothing substantial took place until this motion, the subject matter of this ruling was filed. The plaintiff claims that his previous advocate, Kishore Nanji failed to take any steps to prosecute the suit for no apparent reason.

This court has a wide discretion under Order XVI rule 6 of the Civil Procedure rules to dismiss an action for want of prosecution if no steps are taken to prosecute the suit within 3 years of close of pleadings. This court further has the inherent power to dismiss a suit if the delay in prosecuting the suit is

inordinate.

The reason advanced by the plaintiff to justify the delay cannot stand. The plaintiff has failed to show that it made efforts to reach the offices of his previous advocates to monitor the progress of this suit. There are no annexures to show that the plaintiff had exchanged correspondences with his advocate over the suit. I am satisfied that the plaintiff rushed to instruct another counsel to come in place of his previous advocate with this application. I find that the delay is inordinate and that even if the plaintiff had given good reasons, I would still dismiss the suit because the delay of 7 years is inexcusable. In the circumstances of this case, it is prejudicial to the defendants to allow the suit to continue pending.

In the end, I am convinced that it is fair and in the broad interest of justice that the suit should be dismissed. Consequently this suit is ordered dismissed for want of prosecution with costs to the defendants.

The parties to the suit had recorded consent to the effect that this decision should apply to the following cases:

- (i) Mombasa H.C.C.C. 228 of 1998
- (ii) Mombasa H.C.C.C.229 of 1999

Consequently it is directed that the ruling in this case shall apply to the above suits meaning that the suits are dismissed for want of prosecution with costs to the defendants.

Dated and delivered at Mombasa this 22nd day of May 2006.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Weloba h/b for Mr. Lutta for the Defendant

N/A for the plaintiff.