

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Suit 190 of 2002

NOORDIN F. H. RAJABALI.....PLAINTIFF

VERSUS

1. KUTUBDIN A. KHANBHAI

2. HUSSEINBHAI KHANBHAI

3. HATIMI JOINERY WORKS LTD.....DEFENDANTS

RULING

The court file in this case is lost and the Executive Officer tells me it has not been traced inspite of diligent search having been made. The plaintiff's application to have a skeleton file opened has therefore to be allowed. In any case it is not opposed by the defendant. If anything, Mr. Aboo, counsel for the defendant, has provided three sets of all the documents in the lost file for the reconstruction of the skeleton file.

Getting lost at the time it did when the plaintiff had obtained judgment and was in the process of executing the decree, the plaintiff suspects foul play in the matter. That is clear from his advocates' letters to the court with copies to the defendants' advocates. The letters, counsel for the defendant submits, insinuate that the defendant and or his advocates must have been involved in the disappearance of the file. Having considered the matter and talked with the Executive Officer I find no basis for that insinuation and I would advise counsel to avoid making such suggestions when they have no evidence to back them.

This court takes a serious view of the disappearance of court files. To clear the air in this matter and as requested by counsel for the plaintiff I order police investigations into this matter. If police find evidence connecting anyone with the disappearance of the court file they should not hesitate to take appropriate action. The Deputy Registrar should immediately liaise with the police to commence investigations. In the meantime I direct that a skeleton file be opened to enable the plaintiff proceed with what ever court action he wishes to take. That skeleton file should be kept by the Executive Officer under lock and key. I make no order as to costs in the matter.

DATED and delivered this 16th day of May 2006.

D. K. MARAGA

JUDGE