



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 833 of 1999

CHAMBEKE INVESTMENTS LTD.....PLAINTIFF

VERSUS

SPENCON KENYA LTD.....DEFENDANT

RULING

This is an application by the defendant under Order XVI Rules 5 of the Civil procedure Rules seeking for orders that this suit be dismissed with costs for want of prosecution Rule 5 of Order XVI provides as follows:

“If within three months after (a) the close of pleadings; or..... (c) The removal of the suit from the hearing list; or (d) the adjournment of the suit generally; the plaintiff does not set down the suit for hearing, the defendant may set down the suit for hearing or apply for its dismissal.”.

The application is based on the grounds that there has been inordinate delay by the plaintiff in prosecuting this suit. It is now 2½ years since the last activity ceased in court.

This suit was filed on or about 21st April 1999 by the firm of A.W. Omolo & Co. Advocates for the plaintiff. The plaintiff on or about 21st April 1999 filed a Chamber Summons application under Certificate of Urgency.

On or about 3rd May 1999 the defendant filed his grounds of opposition together with Supporting Affidavit to the plaintiff’s Chamber Summons application dated 21st April 1999. Defence was filed on 31st May 1999.

The matter came up before Githinji J for mention on 26th March 2003 and the parties, requested for time to enable them negotiate an out of court settlement. The matter came up again for mention before Githinji, J on 5th May 2003 and the Hon. Judge ordered that the matter be stood over generally to enable the parties to negotiate and when they are ready to record a consent.

Mr. Billing for the defendant submitted that it is now 2½ years since the last activity ceased in court and that the defendants have been seriously prejudiced by this inordinate and inexcusable delay on the part of the plaintiff and or its lawyers in failing to prosecute the suit expeditiously. Such continued delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in action or is such as to cause serious prejudice to the defendant.

The plaintiff was served with this application but did not file any papers in opposition to the application. There is no explanation by the plaintiff why he took no steps to enforce his right.

I am aware of the courts duty to decide fundamental issues in dispute between the parties without undue disregard to technicalities. I am also aware that I have discretion in the matter (***RAWAL VS. MOMBASA HARDWARE LTD 1968 EA 392***). Normally I am averse to dismissing a case for want of prosecution but in my judgment this is a fit case which should not be allowed to continue any further. The plaintiff has definitely lost interest in the case.

Accordingly I allow the defendants application and dismiss the suit with costs to the defendants together with the costs of this application.

Dated and delivered at Nairobi this 11th day of July, 2006.

J.L.A. OSIEMO

JUDGE