

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Suit 2929 of 1997

HARBINDER SINGH SETHI PLAINTIFF

VERSUS

ROBERT J. WILHELM 1ST DEFENDANT

LEOPARD SYSTMES INC. 2ND DEFENDANT

RULING

In this application dated 8th February, 2005, and brought under Order 16 Rule 5 of the Civil Procedure Rules, the 1st Defendant/Applicant seeks orders that this suit be dismissed for want of prosecution.

This is an old 1997 case. The pleadings closed in April 2001. The Applicant says that the Respondent/Plaintiff has taken no steps since then to set it down for hearing. The Respondent says that its current advocate came on record in November 2001, and was unable to obtain the files from the Respondent's previous advocates, because of a dispute relating to fees, until November 2004, when it attempted to set the case down for hearing. However, the Applicant's own advocates had changed, and a notice of change was served on the Respondent only in February, 2005 which is exactly when this application for dismissal of the suit was filed.

I am satisfied with the explanation of delay provided by the Respondent. It is reasonable, and the delay is excusable. The Applicant himself was indolent, and did not file a notice of change of his advocates until February 2005. In the circumstances, both parties are equally to blame for delay, and it would be highly unjust to remove a party from the seat of justice on account of the events that have been outlined by the Applicant.

Accordingly, I would dismiss this application, with no order as to costs, and direct that the Plaintiff take steps to obtain a hearing date within the next 30 days.

Dated and delivered at Nairobi this 23rd day of November, 2005.

ALNASHIR VISRAM

JUDGE