

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Suit 3467 of 1985

KENYA FINANCE CORPORATION PLAINTIFF

VERSUS

ESHIBAN KIARIE GITAU DEFENDANT

NYAGA NJAMUMO THIRD PARTY

RULING

In this application dated 28th June, 2002, filed initially under a certificate of urgency, the Applicant seeks, among other things, to stay execution of the order issued on 7th June, 2002 and to set aside judgment against the Defendant “and to enter the same against the Third Party”.

The Judgment against the Defendant was entered lawfully, and has not been appealed against. The Plaintiff is entitled to the fruits of that Judgment, and only because the Defendant believes that the Third Party is responsible and obligated to settle the judgment debt, is not reason enough to deny the Plaintiff his right of execution against the Defendant. In any event, I have not seen any evidence of a Judgment entered against the Third Party.

Secondly, there has been an inordinate delay in prosecuting this application. This is an old 1985 case. Judgment was entered, and the decree issued on 13th March, 1988. This application was filed on 28th June, 2002, and despite it being filed under a certificate of urgency, it has not been prosecuted until now. None of this delay has been satisfactorily explained.

The Applicant is guilty of inordinate delay and, therefore, not deserving of this Court’s discretion. In any event, there is no basis to this application, and the same is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 6th day of December, 2005.

ALNASHIR VISRAM

JUDGE