

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL CASE NO. 999 OF 1996

HOMEVEG EXPORTERS LTD PLAINTIFF

VERSUS

KASANGA MULWA DEFENDANT

RULING

This application is brought by way of a Chamber Summons under Order 21 Rule 22 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. In it the applicant seeks an order for the setting aside of a judgment entered herein on 25th July 2003 dismissing the applicant's suit for want of prosecution. It is clear from the record that the suit was dismissed on the courts' own motion under Order XVI Rule 6. The said rule provides that the Court may dismiss a suit in which no step has been taken by either party for a period of three years, with a view to proceeding with the suit, provided that the Plaintiff may bring a fresh suit subject to the law of limitation. The cause of action having arisen in 1995, the claim is clearly statute barred.

The Applicants blame their predicament on the fact that the Defendant was, at the time the suit was dismissed a powerful judge of this Court, a situation which caused a major apprehension that the suit would not, to use the applicants' words "see the light of day". They state, both in the face of Chamber Summons and in the Supporting Affidavit that the said apprehension was fuelled by the applicants legal representatives who advised against pursuing the claim while the Defendant was a judge of the High Court and "immune from civil actions due to privileges accorded to his office."

The Plaintiff Applicant states that it was always keen to prosecute the suit. The applicant has annexed to the Supporting Affidavit correspondence exchanged between the applicant and its legal representatives to confirm this.

I find that the Plaintiff is not the author of its predicament herein and has taken the earliest opportunity to correct the same. As the Applicant has lost the opportunity to institute a fresh suit I consider it fair and just that it be given an opportunity to pursue its claim. I therefore allow this application and order that the default judgment entered on 25th July 2003 be and is hereby set aside and the suit reinstated. Costs in the cause.

Dated and Delivered at Nairobi this 24 th day of September 2004.

M.G. Mugo

Ag. Judge

In the pre sence of:

Obura & Company Advocates for the Plaintiff - Gichimu h/b for Ochieng

Mulwa & Mulwa Advocates for the Defendant – N/A