

REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)

CIV CASE 5459 OF 90

IAN ALEXANDER COWIE PLAINTIFF

VERSUS

HUGH RICHARD COWIE & ANOTHER DEFENDANTS

RULING

This application, for setting aside the orders dismissing the suit in March 2001, is not one in which the court, on the facts disclosed, can legitimately exercise its discretion Judicially and grant the prayers therein.

The age of the case – since 1990 – is a factor which goes against granting these orders. It is said by counsel for the respondent that if this case is re-opened, one of the defendants may not be able to come for a trial, because of ill health. This is another factor I consider proper to bear in mind. The reason for allowing the suit to be dismissed is not good.

There might have been a consent letter asking the court to adjourn the suit on 12th March, 2001. That matter was brought to the attention of the court. The court considered it, and found it inadequate to justify an adjournment. It is not right to reargue the same matter before me again. As I said in my ruling refusing an adjournment there had been too many previous adjournments. To have refused an adjournment at the hearing and then to-day to reopen the matter, is tantamount to granting the adjournment retrospectively.

I find no merit in this application. The application is dismissed.

It is so ordered ex tempore .

R. KULOBA

JUDGE

12.6.2003