



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

Civil Case 45 of 1987

AINEA SESI MUTSIAMBOPLAINTIFF

VERSUS

LION OF KENYA INSURANCE CO. LTDDEFENDANT

RULING

The Application before me is dated 15th October, 2001. It is brought under order XV1 r. 2(1) of the Civil Procedure (Revised) Rules and section 3A of the Civil Procedure Act (cap 21) Laws of Kenya.

The application is supported by an affidavit sworn by Jayne Njeri Gathaara who is the applicant's Advocate.

The import of the supporting affidavit is that this is an old case same having been filed in the year 1987. That very little has been done to prosecute the case. There was an attempt to have it heard in March 2000. But the same was not listed. Since then, no steps were taken to have the case fixed for hearing, hence the application before me.

The application is opposed. A replying affidavit has been filed.

According to the affidavit which has also been sworn by an Advocate from the firm of Advocates representing the plaintiff, the plaintiff in this case died in 1992 that is 5 years after filing the case.

The plaintiff's wife took over the case but went up country. She did not communicate with her Advocate until the year 2001.

It is said that, she was held up with serious family matters.

This case was filed way back in January 1987. It is now 14 years old.

No serious attempt appear to have been made by the plaintiff or her Counsel to have the matter heard.

An application for dismissal of the suit had been made earlier but was withdrawn. Despite this, there has been a long and inexcusable delay in fixing the case for hearing.

The reasons that made the plaintiff remain up-country for so long have not been disclosed. Even after she re-surfaced no attempt was made to have the case fixed for hearing.

Even if this case goes to hearing justice may not be done.

After a period of 14 years, a fair trial has been prejudiced. Witnesses could have died. The plaintiff himself died. Memories have faded. Documents may have been mislaid, lost or destroyed. It could be difficult to trace witnesses who could have gone to places. The respondent herself is a good example.

I think the only way justice can be done in the matter is to allow the application.

The application dated 15th October, 2001 is allowed. The plaintiff's suit is dismissed for want of prosecution.

I have however, considered the issue of costs. I think this is a fit case where I should make no order as to costs.

Dated and delivered at Nakuru this 4th day of February, 2002.

D. M. RIMITA

JUDGE