

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO.312 OF 2000

M/S BARWAZIR (1993) LTD PLAINTIFF

VERSUS

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VERSUS

ZAHAR MANJI 1ST DEFENDANT

N. MANJI 2ND DEFENDANT

N. KASSAM t/a TURBO SOUND 3RD DEFENDANT

RULING

The Plaintiff Applicant set down for hearing a Notice of Motion dated 22nd August, 2000 on 23/4/2002.

Before the commencement of the hearing the Respondents' Advocate raised a Preliminary objection for which he had served a Notice on 15/5/2001. The point raised is that the said application is res judicata having been argued before this court and orders granted. However the orders granted were set aside on application by one of Defendants on 9/2/2001 on condition that an admitted sum of Shs.371,000/- be paid to the Plaintiff which I am now told has been paid. There was a balance of the Plaintiff's claim amounting to Shs.689,500/-. For this sum the court found that there were triable issues and that the defendant was entitled to a hearing to that extent. The respondent therefore states that the application now listed for hearing has been determined. I agree with him. It is for the Plaintiff to set down the suit for hearing. There is already a defence filed by the defendants.

The posed hearing of the application dated 22/8/2000 is therefore dismissed for being res judicata.

Dated at Mombasa this 26th Day of April, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE