

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

civ case 5226 of 89

STANDARD CHARTERED BANK KENYA LTD. PLAINTIFF

VERSUS

UNITED COREBOARD PRODUCTS LTD. 1ST DEFENDANT

KUNVARJI SHIVJI VARSANI 2ND DEFENDANT

SHAMJI SHIVJI VARSANI 3RD DEFENDANT

DR. NARAN SHIVJI VARSANI 4TH DEFENDANT

RULING

The 4th defendant has brought this application under Order XVI Rule 5 of the Civil Procedure Rules for dismissal of the suit filed by the plaintiff against him on the ground that “8 months after the suit was listed for hearing the plaintiff has taken no steps to set it down for hearing thereafter.” I must observe that this ground is not very clear. In my view it does not conform with the requirements of O. XVI Rule 5.

The record of this suit shows that prior to the lodging, on 21.3.2000, of the application, the plaintiff had taken a hearing date on 23.2.99 and the suit was listed to be heard on 8th and 9th June 1999. Though the record is completely silent as to what happened on that date, it is more than clear that no hearing took place. Given those circumstances it cannot be said that the suit was adjourned generally so that the matter can now come within subrule 5 of O. XVI. Consequent upon that, though I share a lot of concern with the 4th defendant regarding the plaintiff’s lack of diligency in prosecuting the suit, I must say that I do not consider it a suitable matter for dismissal for want of prosecution. I say so because I now see that the suit is listed for hearing on 29.5.2001. Given that position, I think the applicant should be allowed to prosecute its suit. And quite obviously in the event the plaintiff is not able to prosecute the suit as arranged, then the applicant can renew his application for dismissal.

In view of what I have stated above, the application is dismissed but without any order as to costs.

Dated at Nairobi this 26th day of January, 2001.

T. MBALUTO

JUDGE