

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 173 OF 2001

ROT-MEI LTD. PLAINTIFF
VERSUS
GENERAL M. TIMOTHY ORWENYO DEFENDANT

R U L I N G

This application seeks an Order that the suit herein be struck out with costs to the Defendant on grounds that the Principal amount claimed was paid before the filing of this suit, and that the suit may embarrass, prejudice or delay the fair trial and is an abuse of the court process. It is dated 13th September, 2001.

An application dated 3rd August 2001 had been set down for hearing on 8.10.2001 and the court's orders were as follows:

“By consent of both parties, as the principal amount has been paid, the dispute on costs and interest to be heard on 2.11.2001”.

That application was by the Plaintiff/Applicant seeking Defence to be struck out and judgment to be entered for the Plaintiff as prayed in the suit.

In my humble opinion, it would be wrong to strike out the entire suit at this stage with the above order in the record. It would create unnecessary confusion. I will not strike out the suit and I will not dismiss this application either. I do stay this application till 2nd November 2001 when submissions will be made on costs and interest in the entire case. The parties will be at liberty to argue this application on that day. Orders accordingly.

Dated this 30th day of October 2001.

ONYANGO OTIENO
JUDGE