

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

CIVIL SUIT NO. 190 OF 2002

JAYANTILAL S. SHAH..... 1ST PLAINTIFF

BUILTECH LIMITED..... 2ND PLAINTIFF

VERSUS

NYABOKE G. ONSONGO.....1ST DEFENDANT

JAQUINE OSORO T/A VIGILANT AUCTIONEERS2ND DEFENDANT

KENYA COMMERCIAL BANK LTD.....3RD DEFENDANT

RULING

The application dated 09/07/2014 seeks that the plaintiff's suit be dismissed for want of prosecution, and the plaintiff be ordered to bear the costs in any event. This is on grounds that, it is over 11 years since the case was filed in court, and neither the plaintiffs nor their counsel have taken any initiative towards prosecuting the case. Further, the 2nd plaintiff who was sued in his personal capacity passed on, in the year 2006, a fact which was made known to the plaintiff - this means the suit against the 2nd defendant has abated.

No response was filed, and the plaintiff's counsel Mr. Mburu informed this court that he has been unable to trace the plaintiff. A perusal of the record shows that this case was filed in the year 2002, and save for two occasions on 01/08/2005 when it was set down for hearing, it has generally remained dormant. Even then, there was no hearing as one of the defence counsel was bereaved.

The matter was next listed on 24/10/2005, but the plaintiff's counsel sought an adjournment as he was engaged before the Court of Appeal in Nairobi. Since then no other steps were taken to have the matter proceed. This means that for the last nine years, the plaintiff's interest in the matter had diminished. Twelve years is the sum total of this file's life, with nothing constructive to show for it. Indeed for the defence counsel's own submission, it is clear the plaintiff has never even made attempts to get in touch or even find out the position regarding the case. The only reasonable inference to be drawn is that the plaintiff has lost interest in the matter. I hold that the application is merited and the suit filed herein by the plaintiff is dismissed with costs to be borne by the plaintiff. The plaintiff shall also bear the costs of this application.

Dated this 7th day of October 2014 at Nakuru

H.A. OMONDI

JUDGE