



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI COMMERCIAL AND ADMIRALTY DIVISION

Civil Case 258 of 1999

STEPHEN OWINO.....PLAINTIFF

VERSUS

HARRISON MBUGUA T/A

MANTRADENTERPRISES.....1ST DEFENDANT

LYDIA ACHIENG ABURA2ND DEFENDANT

WORLD VISION.....3RD DEFENDANT

MENDO & COMPANY ADVOCATES.....1ST GARNISHEE

HAMILTON HARRISON & MATHEW ADV..... 2ND GARNISHEE

RULING

Application dated 26/6/2009 is brought under **Order XVI rule 5 (c) and (d), Order L. rule 1 and Section 3A of Civil Procedure Act.**

The applicant is first defendant. The applicant seeks order for dismissal of this suit for want of prosecution and for costs on the ground that the respondent has not taken any step to have this matter disposed since 28/11/2008. That the first defendant is kept in the darkness and out of its money due to delay on the part of plaintiff.

The application is supported by affidavit of Job Mwangi Thiga an advocate acting for first defendant. He swears that this suit was file don 8/3/1999. That various orders were made by this court regarding payment of money to the plaintiff. Then on 18/10/2005 the court (Waweru J) ordered some money he paid to the first Garnishee Kshs.403,652/= and Kshs.1,398,212.44 be paid to second

Garnishee. Thereafter court (Ransley J) ordered that an inquiry be carried out to ascertain the liquidated sum ordered to be made. However the said Judge ordered the second garnishee “***continue to retain the sums in their client account due to the first defendant in an interest earning account.....***” There was an attempt to review Judge Ransley order but the application was rejected by the court (Lesiit J) on 11/5/2007. It was sworn that from 28/11/2008 no action has taken place. On that date the plaintiff sought committal order but the same was rejected by court (Kihara J) “***Saying, World Vision, 3rd defendant was ordered to pay unspecified amount of money. There was no decree passed against World Vision which it can be said to have failed to satisfy. The plaintiff has taken no steps since 8/3/1999 to set the case down for hearing on merits. Instead he had continued to pursue interlocutory applications.***”

Upon perusing the record and the various orders made by court it is clear the suit has never been heard on merit. There is no decree in favour attaching to the money held by the Garnishee since March, 1999.

In the circumstances I find that the plaintiff contention that the suit is finalized and that it is at the stage of execution cannot be sustained. I allow the application dated on 26/6/2009 and grant orders as prayed with costs to the applicant of this suit and the application.

Orders accordingly.

Dated, Signed and Delivered at Nairobi this 2nd Day of November, 2009.

JOYCE N. KHAMINWA

JUDGE