



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Civil Suit 421 of 2001**

**SHERLINE GENERAL SERVICES LTD ..... PLAINTIFF**

**- Versus -**

**HERVEEN GADHOKE ..... DEFENDANT**

**Coram: Before Hon. Justice Mwera**

**Khanna for the applicant**

**Wameyo for the respondent**

**Court clerk – Mitoto**

**RULING**

The defendant desires this court to dismiss the suit herein in accordance with O16 r. 5(a) and Section 3A Civil Procedure Act because by the 24<sup>th</sup> January 2005 when his application was filed, over 3 years had elapsed with the plaintiff taking no steps to list the case for hearing, the pleadings having closed with the filing of the defence on 9<sup>th</sup> October 2001.

Mr. Khanna told the court that the plaintiff got some injunctive orders in this cause by which the subject motor vehicle was released to it and thus it appeared to have lost interest in prosecuting the case. That the situation being inexcusable and prejudicial to the defendant, the defendant is entitled to the orders sought. He added that indeed to get the cause listed the defendant was obliged on occasions to pay court adjournment fees imposed on the plaintiff, but which it ignored to pay. And that the argument that the plaintiff had for a long time only had one director, after the demise of another, was not good enough to explain the state of things.

On the issue of the demise of one director Mr. Wameyo posited that since his death on 18<sup>th</sup> November 2002, there had been unsuccessful efforts to replace him but that now one had been appointed and the plaintiff (a private company requiring a minimum of 2 directors) is ready to operate again, including fixing early hearing dates. That that would allow the plaintiff company to prove its claim on loss of business at Kshs. 30,000/- per day when the subject motor vehicle was not in the hands of the plaintiff.

Having considered this case and circumstances surrounding it, the orders sought ought to be granted. The plaintiff got the motor vehicle in question and that seems to have done it all. There is no evidence that there were unsuccessful attempts to replace the dead director or that another has been appointed. It has not been denied that the defendant has had to pay fees imposed on the plaintiff, which the plaintiff ignored to pay. One interested in a matter should show it – not with such a conduct.

In sum orders are granted as sought.

Orders delivered on 28<sup>th</sup> December 2005.

**J.W. MWERA**

**JUDGE**



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