



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: KWACH, TUNOI & OWUOR, JJ.A.)

CIVIL APPEAL NO. 97 OF 1998

BETWEEN

SALMIN MBARAK

LAABID SAID

THE UNITED GASSAM ARAB ASSOCIATION..... APPELLANTS

AND

HADI KARAMA

AWADH MBARAK

AWADH ALYAEU

GASSAM COMMUNITY WELFARE SOCIETY..... RESPONDENTS

(Appeal from the Ruling of the High Court of Kenya at Mombasa (Justice Mary Ang'awa) dated the 21st day of November, 1996

in

H.C.C.C. NO. 802 OF 1995)

JUDGMENT OF THE COURT

The appellants, as plaintiffs, sued the respondents in the High Court of Kenya at Mombasa for a declaration that all the properties enumerated in the Plaint are the properties of an association known as the United Gassam Arab Association and that the respondents be ordered to render true and accurate account of all moneys, rent and mesne profits received on account.

The respondents requested further and better particulars from the appellants, which request was ignored. It is pertinent for us to refer to the appellants' letter dated 14th March, 1996 in reply to the

request:-

"Your letter of 8th March, 1996 refers.

Please yourselves."

However, on 30th August, 1996 the appellants purported to supply the particulars in the following manner:-

" Particulars: Order VI r 8

a) -This is a matter of evidence

(b)+(c)-The particulars sought can be obtained in the Register of Societies, being public matters whose records are kept by the Registrar.

(d) -No resolution in writing was made. Agreement to sue was orally reached."

The respondents **"indeed pleased themselves"** and applied to the court for an order dismissing the appellants' suit on the ground that the appellants had refused to supply the particulars sought and ordered by the court. The court made the order asked for and consequently the appellants' suit was dismissed.

The main ground of appeal before us is that the learned Judge wrongly exercised her discretion in dismissing the suit given that no specific and clear order had been made requiring the appellants to do certain things or take certain steps at the risk of having the suit dismissed in default.

The record of the proceedings before us shows that not only did the appellants fail to supply the particulars sought but also did not do so within a reasonable time. They in effect informed the respondents to go and make a search for the vital information sought and took about four months to communicate with the respondents.

We are alive to the fact that the dismissal of an action for the failure to supply particulars imposes a drastic penalty; and, further that the dismissal of any action at any interlocutory stage is a very serious matter and may well work serious injustice.

But, in the matter before us the appellants exhibited extreme arrogance at every stage of the proceedings and had shown a wilful disregard of all orders made by the superior court. Further, they had demonstrated by their conduct that they were unwilling to comply with whatever orders the court was going to make. In the circumstances, the learned Judge cannot be faulted for the orders she made. The appellants clearly did not deserve any further indulgence from the court.

This appeal is devoid of merit and is ordered dismissed with costs to the respondents. This is our order.

Dated and delivered at Mombasa this 16th day of July, 1998.

R. O. KWACH

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

E. OWUOR

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

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