



Case Number:	Civil Suit 421 of 2001
Date Delivered:	28 Dec 2005
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	-
Judge:	John Wycliffe Mwera
Citation:	SHERLINE GENERAL SERVICES LTD V HERVEEN GADHOKE [2005] eKLR
Advocates:	-
Case Summary:	[RULING] - Company Law - Civil Procedure and Practice - Dismissal of suit - Order 16 r. 5(a) Civil procedure Rules - Section 3A Civil Procedure Act .
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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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 24th 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 9th 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 18th 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 28th December 2005.

J.W. MWERA

JUDGE



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