

IN THE HIGH COURT OF TANZANIA

AT DARES SALAAM

CIVIL CASE NO. 59 OF 2012

KONDA KIBIRWA PLAINTIFF

vs.

SECURITY GROUP DEFENDANT

Date of last order – 3/12/2012

Date of Ruling – 11/3/2013

RULING

Shangwa, J.

On 5th April, 2012, the Plaintiff Konda Kibirwa presented for filing Civil Case No. 59 of 2012 against the Defendant SECURITY GROUP claiming for a total sum of Tshs.400,000,000/=.

On 7th September, 2012, Mr. Jadeja presented a Notice of Preliminary Objection against its hearing on ground that the plaintiff had filed an identical suit in this court against

the defendant which was dismissed under O. XXV, r. (2)(1) of the Civil Procedure Code, 1966.

On 18th September, 2012, Mr. Jadeja filed a second Notice of Preliminary Objection on grounds that the suit is time barred.


In my opinion, the point of preliminary objection which was raised by Mr. Jadeja in the first Notice of Preliminary Objection is sufficient to dispose of this matter. For this reason, I will not consider the point of objection which was raised by him in his second Notice of Preliminary Objection.

On his first Notice of Preliminary Objection, he contended that O.XXV of the Civil Procedure Code does not provide for a fresh suit as does O.IX r. 4 of the code. He submitted that after the dismissal of the plaintiff's suit for failure to furnish security for costs which suit was dismissed under O.XXV r. 2(1) of the code, the plaintiff was

supposed to make an application under O.XXV r. 2(2) to set aside that dismissal. He cited the plaintiff's suit which was dismissed as Civil Case No. 159 of 2008.


For me, I just agree with Mr. Jadeja's contention and submission. I agree with him entirely that after the dismissal of his suit for failure to furnish security for costs, he was not supposed to file a fresh suit. What he was legally supposed to do is to apply for setting aside the dismissal order and request for extension of time to furnish security for costs as required by law.

For this reason, I uphold the point of objection raised by Mr. Jadeja for the defendant in the first Notice of Preliminary Objection and I strike out the suit with costs.


A. Shangwa
JUDGE

11/3/2013

Delivered in open court this 11th day of March, 2013 in the presence of the plaintiff and Mr. Jadeja for the defendant.


A. Shangwa
JUDGE

11/3/2013