

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)
A.D. 1998

SUIT NO: 994 of 1996

Between:

GUNTHER KRUE

PLAINTIFF

AND

(1) ANDERSON BERNARD JOSEPH
(2) AUDREY JOSEPH

DEFENDANTS

Appearances:

Mr. Bledman and Mr. Reviere for the Plaintiff - Absent
Mr. Ferguson John for the Defendants

1998: OCTOBER 8

DECISION

Mitchell J., In Chambers

This is an application by the Defendant for the matter to be deemed abandoned under Order 34 rule 11. Counsel for the Defendant had no law for the assistance of the Court. On 24th January, 1997 the Defendants' Defence and Counterclaim was filed. There is no evidence it was served before filing, contrary to Order 18 r (6) (1) (d). Rather, it was incorrectly first filed and then served. No Defence to Counterclaim was served on the Defendant or filed by the Plaintiff. The Plaintiff's Defence was due to be served on the Plaintiff within 14 days after service of the Counterclaim. Instead, the Plaintiff on 26th August, 1997 filed a Request for Hearing and a bundle of the pleadings. The filing of such a Request would normally render a matter incapable of being deemed abandoned under Rule 11. This Request for Hearing is however out of order, as it could only have been filed after the Plaintiff's Defence to Counterclaim which was never forthcoming.

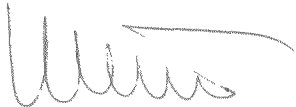
The Defendant on 9th September, 1998 applied for the suit to be deemed abandoned under Order 34 r 11. The ground given in the Summons is the failure to take any proceeding or file any document for one year from the date of the last proceeding. In the Affidavit in Support filed on the same day 9th September, 1998, the Defendant explains that the Defence filed on 24th January, 1997 was the last document filed in the suit, and that no other proceeding has been taken since then.

This claim is incorrect. The last document filed was the Request for Hearing of 26th August, 1997. There is no evidence that the Request for Hearing was ever served on the Defendant's Solicitor, but the normal search of the Court's file made before a Solicitor allows his client to swear as to the state of the Court's file would have revealed the actual state of the filings as I have earlier indicated. In any event, I find that the Request for Hearing is improperly filed as being contrary to the Rules of Court.

This suit is not ripe for hearing, and as such is incapable of being deemed abandoned.

The application of 9th September, 1998 is dismissed.

There will be no order as to costs.

A handwritten signature in dark ink, appearing to read 'I D Mitchell', with a long horizontal stroke extending to the right.

JUSTICE I D MITCHELL
HIGH COURT JUDGE (Ag)