

Dismissed and Opinion Filed September 11, 2017



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01018-CV

**CLIFFORD NKEYASEN, Appellant
V.**

ALAMO MANHATTAN ROUTH STREET, LLC, Appellee

**On Appeal from the County Court at Law No. 4
Dallas County, Texas
Trial Court Cause No. CC-16-02866-D**

MEMORANDUM OPINION

**Before Justices Bridges, Fillmore, and Stoddart
Opinion by Justice Bridges**

Clifford Nkeyasen appeals the trial court's judgment awarding Alamo Manhattan Routh Street LLC possession of real property formerly leased by Nkeyasen and attorney's fees. In five issues, Nkeyasen argues (1) he filed a timely objection to the retired judge sitting by assignment, and the judge was therefore automatically disqualified; (2) the trial court abused its discretion in denying his right to a jury trial; (3) the trial court abused its discretion in denying his motion for continuance; (4) the trial court abused its discretion in preventing him from introducing evidence of the "affirmative defense of retaliation by landlord"; and (5) the trial court erred in awarding Alamo \$9500 in attorney's fees. In his brief, Nkeyasen "asks this Court to enter an order vacating the trial court judgment and dismissing this case as moot since the lease has expired by its own terms."

After Nkeyasen filed this appeal in August 2016, the trial court determined in January 2017 that Nkeyasen filed a timely objection to the retired judge sitting by assignment, disqualification of the assigned judge was therefore automatic, and any orders or judgments signed by the assigned judge were void. The trial court vacated the judgment signed by the assigned judge and ordered that any writ of possession, garnishment, or attachment issued by the Dallas County Clerk for the subject real property was void. On February 14, 2017, the trial court entered an “Order of Dismissal of Counterclaim” stating the case came on for trial, Alamo nonsuited, and “Nkeyasen chose not to pursue his counterclaim at trial.” The order dismissed without prejudice Nkeyasen’s counterclaim.

A case becomes moot if, since the time of filing, there has ceased to exist a justiciable controversy between the parties—that is, if the issues presented are no longer “live,” or if the parties lack a legally cognizable interest in the outcome. *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 162 (Tex. 2012). Put simply, a case is moot when the court's action on the merits cannot affect the parties’ rights or interests. *Id.* If a case is or becomes moot, the court must vacate any order or judgment previously issued and dismiss the case for want of jurisdiction. *Id.*

Here, the final judgment signed by the assigned judge, including the attorney’s fees awarded in the judgment, has been vacated. Alamo has nonsuited its claims, Nkeyasen chose not to pursue his counterclaim at trial, and Nkeyasen’s counterclaim has been dismissed for want of prosecution. Under these circumstances, any action by this Court cannot affect the parties’ rights or interests. *Id.*

We dismiss this appeal for want of jurisdiction.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CLIFFORD NKEYASEN, Appellant

No. 05-16-01018-CV V.

ALAMO MANHATTAN ROUTH
STREET, LLC, Appellee

On Appeal from the County Court at Law

No. 4, Dallas County, Texas

Trial Court Cause No. CC-16-02866-D.

Opinion delivered by Justice Bridges.

Justices Fillmore and Stoddart participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED** for want of jurisdiction.

It is **ORDERED** that appellee ALAMO MANHATTAN ROUTH STREET, LLC recover its costs of this appeal from appellant CLIFFORD NKEYASEN.

Judgment entered September 11, 2017.