



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL CASE NO. 167 OF 2013**

**ANNE NJOKI MASIKONTE OSONO.....1ST PLAINTIFF/RESPONDENT**

**MASIKONTE OLE OSONO.....2ND PLAINTIFF/RESPONDENT**

**-VERSUS-**

**K-REP BANK (K) LIMITED.....1ST DEFENDANT/APPLICANT**

**GARAM INVESTMENTS.....2ND DEFENDANT/APPLICANT**

**RULING**

1. The plaintiff filed this action on **30th April 2013** seeking an injunction to restrain the defendants from selling by public auction or private treaty or in any other way interfering with title no. **CISMARA/NAIBOR AJIJK/560**.
2. The plaintiff also filed a notice of motion dated **30th April 2013** and obtained on **7th May 2013** an injunction pending inter partes hearing.
3. The said application was adjourned from time to time and was lastly in court on **26th November 2014** when it was adjourned generally at the instance of the plaintiff. The injunction was on that day vacated.
4. The plaintiff failed to take any action in this matter thereafter. The defendants have filed a notice of motion dated **22nd October 2014** brought under Order 17 Rule 1 (3) of the Civil Procedure Rules seeking dismissal of this suit for want of prosecution.
5. Order 17 Rule 1 (3) provides that any party may apply for dismissal of a suit when no action has been taken for one year. In this case, action was last taken by the plaintiff on **26th November 2014**. The plaintiff did not file any papers in opposition to the application even though his advocate was served with the same. There was no attendance in court on behalf of the plaintiff when the application came up before court for hearing.
6. There is no doubt in my mind that there has been lack of due diligence in ensuring prosecution of this case on the part of the plaintiff in this case. The delay on the plaintiff's part in prosecution of this case is prolonged, inordinate and inexcusable. Such a delay, can involve substantial risk that fair trial of the issues in the matter would not be achieved.
7. Accordingly, I order that this suit be and is hereby dismissed for want of prosecution and the costs of the suit are awarded to both the defendants. The defendants are also awarded costs of the notice of motion dated **22nd October 2014**.

**DATED, SIGNED and DELIVERED at NAIROBI this 30<sup>th</sup> day of October, 2018.**

**MARY KASANGO**

**JUDGE**

**Ruling read and delivered in open court in the presence of:**

Court Assistant.....Sophie

..... for the Plaintiffs

..... for the Defendants

**MARY KASANGO**

**JUDGE**