



**REPUBLIC OF KENYA**

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

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL CASE NO. 560 OF 2015**

**PATRICK KIMANI KAMAU**

**T/A MKOPA INVESTMENTS.....PLAINTIFF**

**-VERSUS-**

**SAFARICOM LTD.....1ST DEFENDANT**

**MKOPA KENYA LIMITED.....2ND DEFENDANT**

**MOBILE VENTURES KENYA LIMITED.....3RD DEFENDANT**

**RULING**

1. The plaintiff filed its plaint and simultaneously filed an interlocutory application on **26th August 2015**. This court by its ruling of **21st September 2016**, dismissed the interlocutory application.
2. The plaintiff from the date of that ruling has failed to proceed with this case. The 1st defendant by notice of motion dated **6th April 2018** seeks dismissal of this suit for want of prosecution. It is brought under Order 17 Rule 2 (3) of the Civil Procedure Rules.
3. The 1st defendant is on record having written to the plaintiff’s learned advocate on **14th March 2017** inquiring whether the plaintiff was desirous of prosecuting this suit. That letter did not receive a response from the plaintiff’s advocate.
4. I agree with the 1st defendants submission that the delay in prosecuting this suit is inordinate and inexcusable. If it is allowed to continue, there is a risk that fair trial of the issues before court will not be possible. The plaintiff’s failure to proceed with this case is unacceptable. There is nothing presented before court which can dissuade me from granting the 1st defendant’s application.
5. In the end this case is dismissed for want of prosecution with costs being granted to all the defendants. The 1st defendant is awarded costs of the notice of motion dated **6th April 2018**.

**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 Applicant

.....for the Respondent

**MARY KASANGO**

**JUDGE**