



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 381 OF 2009

JAMES KABAU MURIUKI.....PLAINTIFF

VERSUS -

PHOENIX OF E.A. ASSURANCE COMPANY LIMITED.....DEFENDANT

RULING

1. The defendant has asked the court to dismiss the plaintiff's suit, for want of prosecution.
2. The suit was filed on 26th May 2009.
3. After the defendant was served with the Complaint and Summons, it entered appearance on 10th June 2009. Thereafter, the defendant's defence was filed on 14th June 2009.
4. Since the 24th of June 2009 the plaintiff had not taken any steps to prosecute his case.
5. On 18th November 2011, the defendant filed an application for the dismissal of the suit. However, when the application came up for Hearing on 24th January 2012, the defendant failed to attend court.
6. Mabeya J. dismissed the defendant's application, for non-attendance.
7. The defendant waited for a period of 4 years, and then filed a second application, for the dismissal of the suit. This Ruling is in relation to that application.
8. I note that the plaintiff had failed to take any steps to prosecute his case, since 24th June 2009.
9. There has been no explanation tendered by the plaintiff for his failure to take steps in the case.
10. Secondly, the inactivity has continued for an inordinately long period of time.
11. Thirdly, the cause of action was said to have arisen on 25th May 2008. Therefore, it is now almost 8 years since the cause of action accrued.
12. In the circumstances, I am satisfied that the plaintiff has lost interest in the case. And because the continued existence of the case is an un-necessary burden on the defendant, justice demands that this litigation be brought to an end. Therefore, I now order that the suit be dismissed forthwith. The costs of

the application dated 18th August 2015 and also the costs of the suit, are awarded to the defendant.

DATED, SIGNED and DELIVERED at NAIROBI this 18th day of April 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

No appearance for the Plaintiff

Miss Wambugu for Kissinger for the Defendant

Mr. C. Odhiambo, Court clerk.