



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 248 OF 2014**

**PURE WATER RESOURCES LTD ..... PLAINTIFF**

**VERSUS**

**KENYA COMMERCIAL BANK & 2 OTHERS ..... DEFENDANT**

**RULING OF THE COURT**

1. The **Notice of Motion** application before the court is dated and filed herein on 11<sup>th</sup> December 2015, by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The application seeks the following orders;

***(i) That the suit herein be dismissed for want of prosecution.***

***(ii) That the Plaintiff/1<sup>st</sup> Respondent bear the costs of the suit and of this application.***

2. The application is premised on the grounds set out therein and is supported by the affidavit of George Brian Akello sworn on 11<sup>th</sup> December 2015.

3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant support the application. The Plaintiff was served with the application through their advocates on record Messrs Mogire & Company Advocates. However, there is no response to the application. The affidavit of service was filed herein on 29<sup>th</sup> January 2016. This court therefore, being satisfied that the Plaintiff was duly served, allowed the applicant to proceed with the application in the absence of the Plaintiff.

4. I have carefully considered the application.

***(i) The Plaintiff filed this suit on 12<sup>th</sup> June 2014 simultaneously with its Notice of Motion application of the same date.***

***(ii) The Plaintiff's said application was heard on 25<sup>th</sup> July 2014 and dismissed by a ruling delivered by this court on 18<sup>th</sup> November 2014.***

***(iii) Since the dismissal of the aforesaid application the Plaintiff has not taken any step whatsoever in the suit.***

*(iv) It is more than 1 year since dismissal of the Plaintiff's application.*

*(v) It is obvious that the Plaintiff is not interested in the suit and has no intention whatsoever of pursuing it to its logical conclusion.*

*(vi) The pendency of the suit has no further purpose, and is not in the interest of justice.*

*(vii) It is only just, expeditious and in the interest of all the parties that the suit be dismissed forthwith.*

5. The court also noted, while dismissing the Plaintiffs application for injunction on 18<sup>th</sup> November 2014, that the Plaintiff was at liberty to pursue its claim for Damages, if any either in this suit or in any other suit. Now, since the Plaintiff has not take any action since 18<sup>th</sup> November 2014, it is the position of this court that the suit now services not useful purpose and should be dismissed.

6. Accordingly, the Notice of Motion application before the court is allowed. The suit herein is dismissed. Costs of this suit and costs of this application shall be for the 3<sup>rd</sup> and 4<sup>th</sup> Defendant/Applicant

Orders accordingly.

**READ, DELIVERED AND DATED, AT NAIROBI THIS 15<sup>th</sup> DAY OF APRIL 2016.**

**E. K. O. OGOLA**

**JUDGE**

**Ruling Read in open court in the presence of:**

No Appearance for Plaintiff

No Appearance for 1<sup>st</sup> & 2<sup>nd</sup> Defendants

Mr. Odhiambo for 3<sup>rd</sup> & 4<sup>th</sup> Defendants

Teresia – Court Clerk