

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 778 OF 1994

ZACHARY OMWERI.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED.....RESPONDENT

RULING

1. Kenya Commercial Bank Ltd the defendant herein, took out the motion dated 2nd May 2014, in which it applied for the suit to be dismissed for want of prosecution. The motion was served but the same did not attract any response from the plaintiff hence this motion proceeded exparte. In fact the record shows that the plaintiff's advocate had appeared before Hon. Mr. Justice Mbogholi on 16.11.2015 and promised to file a reply within 2 days. Come 19.11.2015, the learned advocate had not filed any response.

2. It is the defendants submission that the last time this suit was in court for hearing was on 3rd December 1997. On the aforesaid date the suit was stood over generally and the plaintiff has not taken any steps to have it listed for hearing. I have taken into account the averments in the supporting affidavit of Mr. Walter Amoko plus the grounds stated on the face of the motion.

3. The averments that the suit was last in court on 3rd December 1997 and that the plaintiff has not taken any step to have the same prosecuted has not been controverted. I have also examined the record and it supports the averments of Mr. Amoko. I am convinced that the plaintiff has lost interest in pursuing this case. The delay appears to be unreasonable and inexcusable.

4. In the end, the motion dated 2nd May 2014 is well founded. It is allowed as prayed.

Dated, Signed and Delivered in open court this 11th day of December, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant