

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 204 OF 2009

TOYO MOYO CO. LTD.....PLAINTIFF/RESPONDENT

VERSUS

BADRUDIN HUSSEIN HAJI ISSA (sued

as legal representative of the Estate of the

Late Hussein Haji Issa).....1ST DEFENDANT/RESPONDENT

PAUL OLE YIALE t/a

NASIOKI AUCTIONEERS.....2ND DEFENDANT/APPLICANT

RULING

The Notice of Motion dated 5/7/2011, is brought pursuant to **Order 50 Rule 1** and **Order 17 Rule 2(1) (3)** of the **Civil Procedure Rules**. The defendant/applicant prays that the suit be dismissed for want of prosecution and costs be awarded to the applicant.

The plaintiff/respondent was not represented nor was there any reply to the application. The court was satisfied that the plaintiff/respondent was served with the instant application because an affidavit of service dated 23/5/2013, was sworn by George Gembe, a process server, who confirmed to having served the secretary to the respondent's counsel Kiptoo and Company Advocates on 2/5/2013.

This suit was filed way back on 20/7/2009. The last pleading was filed by Kiptoo & Company Advocates way back on 9/2/2010 and list of agreed issues on 2/6/2013. Since then, the plaintiffs and the advocates have not done anything towards prosecution of this suit. It is now three years since the pleadings closed. Having failed to attend court or file a reply, the only presumption the court can draw is that the plaintiff is not interested in the prosecution of this case. For the above reasons, I allow the application dated 5/7/2011, dismiss the suit for want of prosecution with costs to the defendant/applicant.

DATED and DELIVERED this 12th day of June, 2013.

R.P.V. WENDOH

JUDGE

PRESENT:

N/A for the plaintiff/respondent

N/A for the 1st defendant/respondent

N/A for the 2nd defendant/applicant

Kennedy – Court Clerk