



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**JUDICIAL REVIEW DIVISION**  
**MISC. APPL. NO. 575 OF 2004**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**KENYA REVENUE AUTHORITY**

**COMMISSIONER OF CUSTOMS & EXCISE ..... RESPONDENT**

***EX-PARTE***

**INTERNET TRADE CONNECTION (K) LTD**

**RULING**

1. This matter is coming up for the *ex-parte* applicant to show cause why the matter should not be dismissed for want of prosecution. The matter was commenced by an application for leave to apply for orders of judicial review which was granted on 12<sup>th</sup> May 2004. The matter was adjourned generally on 5<sup>th</sup> December 2005 and no step was taken to prosecute the matter causing the court to notify the *ex-parte* applicant of its intention to dismiss the suit.
2. The *ex-parte* applicant has filed an affidavit of one P. M. Gichuru, the advocate on record seized with the matter where he depones that the court file went missing in 2005 and the firm made efforts to trace it. By a letter of 9<sup>th</sup> February 2007 they sought assistance from the Deputy Registrar but this was not forthcoming.
3. When the matter came up for showing cause on 5<sup>th</sup> August 2013, Counsel applied for an adjournment and by an email dated the same day wrote to the client to get in touch regarding the matter. Mr Muchoki, who appeared before me, requested 30 days to get instructions from the client to prosecute the matter.
4. Whether or not to dismiss a matter for want of prosecution is a matter of discretion to be exercised by the court based on pleaded facts. In my view, there is a yawning gap between the last effort

made by the applicant to seek assistance to locate the court file on 13<sup>th</sup> February 2007 to the time they were woken up from their slumber by the dismissal notice. This is a period of seven years. Seven years of unexpected action.

5. The *ex-parte* applicant ought to have prosecuted the suit with alacrity and indeed if it was interested, it would have contacted the advocate. I also note that contrary to what was stated in the letter to the Deputy Registrar, the matter was not part heard before Ibrahim J.
6. There is no material for me to exercise discretion in the *ex-parte* applicant's favour. The matter is dismissed for want of prosecution with no order as to costs.

**DELIVERED** and **DATED** at **NAIROBI** this 8<sup>th</sup> August 2013

**D.S. MAJANJA**

**JUDGE**

Mr Muchoki instructed by Ahmednasir Abdikadir and Company Advocates for the *ex-parte* applicant.