



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO. 227 OF 1997**

**HEMA INVESTMENTS LTD.....PLAINTIFF**

**VERSUS**

**SPENCON (K) LIMITED.....DEFENDANT**

**RULING**

Before me is the Notice of Motion dated 20/7/2012, brought ex-parte in which the defendant/applicant prays that the court do issue a notice in writing to the plaintiff to show cause why this suit cannot be dismissed for want of prosecuting. The application is brought pursuant to **Order 17 Rules 2(1) and 3** and **Order 51 Rule (1)** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**. The grounds upon which it is made is that it is over one year since the plaintiff set down this suit for hearing. That on 16/4/2010 J. Ouko dismissed the defendant's application and to date the plaintiff has not moved to prosecute the suit. Mr. Mahida, counsel for the applicant urged that the cause of action arose in 1995; the suit was filed in 1997 and that under **Order 17(1)** of the **Civil Procedure Rules**, only the court can move on its own motion to issue a notice to show cause but under **Order 17(3)** a party can move the court to issue a notice to show cause on the plaintiff.

I have perused the file and I do notice that the last time that this matter was in court is the 16/4/2010 when J. Ouko read his ruling in this matter. It is a matter filed in 1997 and in exercise of this court's discretion, I hereby order that a notice to show cause do issue on the plaintiff, pursuant to **Order 17 Rule (1)** of the **Civil Procedure Rules**. The same be issued by the Deputy Registrar to show cause why the suit cannot be dismissed for want of prosecution. It is so ordered.

**DATED and DELIVERED this 28<sup>th</sup> day of March, 2012.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

N/A for the plaintiff

Mr. Njuguna holding brief for Mr. Mahida for the defendant

