



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MILIMANI**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**CIVIL SUIT NO.1118 OF 2001**

**MESHACK**

**TINEGA**

**T/A MEELIN DESIGN SERVICES.....PLAINTIFF**

**VS.**

**NAIROBI CITY COUNCIL.....DEFENDANT**

**RULING**

1. The suit in this matter was dismissed on 13<sup>th</sup> June 2003 for want of prosecution. On that date neither party attended court. The application before me is a Chamber Summons application dated 12<sup>th</sup> September 2005 seeking orders to set aside the orders dismissing the suit of 13<sup>th</sup> June 2003 aforesaid.
2. The grounds upon which the application is based are that on the date the suit was dismissed, counsel for the Plaintiff had not attended court because the notice to show cause had been served upon the firm of OsoroMogikoyo& Company Advocates instead of the Plaintiff’s firm then on record. The Plaintiff therefore claims that it is just for him to be allowed to pursue the claim which he states was fully settled save for interest.
3. The application is opposed through a replying affidavit of Karisalha the Defendant’s Deputy Director of Legal Affairs sworn on 8<sup>th</sup> March 2012. The Defendant’s position is that it would be unjust to set aside the orders of 13<sup>th</sup> June 2003 as no reasonable grounds have been put forth by the Applicant. The Defendant states further that this is an old suit which has been substantially settled. The Notice of Motion itself has remained unprosecuted for 6 years having been filed on 12<sup>th</sup> September 2005. There is therefore an irresistible inference that the Plaintiff was not keen to prosecute the matter. In addition, no notice of change was filed to show that the firm on record for the plaintiff had ceased acting at the time the notice was served upon it.
4. I have carefully considered the application based on the affidavit evidence tendered as well as the submissions by counsel for the parties.
5. The only ground upon which the Applicant seeks reinstatement of the suit is that the notice of dismissal was not served upon the then advocates on record for the Plaintiff. Beyond this, no reasons have been placed before me to justify why the suit should be reinstated almost nine years after it was dismissed for want of prosecution. Further, the indolence of the Applicant that led to the dismissal of the suit in the year 2003 has consistently continued to manifest itself as discernible from the fact that the application before me was itself filed on 12<sup>th</sup> September 2005. I do not think that the Plaintiff deserves the exercise of the

court's discretion as this delay itself defeats equity. Allowing the application would not be in the interests of justice as there has to be a limit to litigation. The claim itself is technically time-barred as six years have lapsed since the suit was dismissed. I would also not want to imagine that the Defendant would now be forced to make provision for such a stale claim just like I do not feel that the Applicant deserves any benefit for all the years he has been asleep over the matter.

6. For these reasons, the Application is dismissed with costs to the Defendant/Respondent.

**IT IS SO ORDERED.**

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 14<sup>TH</sup> DAY OF JUNE 2012.

**J.M. MUTAVA**  
**JUDGE**