



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Civil Case 411 of 1994

**NATIONAL BANK OF KENYA LTD.....PLAINTIFF
VERSUS**

**TECHNO PRESS (K) LTD.....1ST DEFENDANT
JOSEPH ONDINGO AGOLA.....2ND DEFENDANT
CEPHAS ODHACH AGOLA.....3RD DEFENDANT**

RULING

This suit was filed way back in 1994. Since then it has never been prosecuted. The court record shows that it was last in court on 16/6/03 when it was stood over generally. On 27/4/2012, the court issued a notice to show cause to the parties herein. As a result Kenyariri & Associates Advocates have filed a replying affidavit opposing its dismissal for the reason that this file has been missing whenever they wanted to take action. Counsel annexed to his affidavit some correspondence with the Deputy Registrar. One letter is dated 27/8/04 when the Deputy Registrar wrote to the plaintiff's advocate on record indicating that the file was now available and they could take dates. After that, this court has no idea what happened because they never took any date in 2005 as had been intimated by the said advocates. The next letter to the Deputy Registrar is on 20/7/07 and 2/11/2001. If the file kept on going missing, the plaintiff's counsel has not explained why he did not apply to have it kept in the strong room. Even if that was the case, the plaintiff has also been lax in prosecuting the suit. The court will exercise its discretion and allow the plaintiff a period of 90 days within which to do discovery and set the suit down for hearing in default it will stand dismissed. The plaintiff to bear costs of the notice to show cause.

DATED and DELIVEED this 8th day of June, 2012.

**R.P.V. WENDOH
JUDGE**

PRESENT:

Mr. Achola holding brief for Mr. Kerongo for the plaintiff

N/A for the defendants
Kennedy – Court Clerk