

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Civil Case 453 of 1994

NATIONAL BANK OF KENYA LTD.....PLAINTIFF

VERSUS

SILAS KIPTOO CHEBURET.....DEFENDANT

RULING

This suit was filed in 1994 about 18 years ago. On 27/4/2012, the court moved under **Order 17 Rule 2** and issued notice to the plaintiff to show cause why the suit cannot be dismissed for want of prosecution. The plaintiff's counsel filed an affidavit opposing the dismissal for reasons that the matter was concluded and warrants of arrest in execution were issued and re-issued as evidenced by the annexures 1(a) and (b), the decree and warrants; that the file went missing despite enquiries as to its whereabouts. The counsel did not, however, attach the letters in which the whereabouts of the file was questioned. The respondent prays that the court should not dismiss the suit in the interests of justice and the court to find that it is concluded.

I have perused the file and some of the documents exhibited by the plaintiff. It seems that this matter had been concluded and it has been pending for execution. I make a finding to the effect that it is a concluded matter but is pending execution and it cannot therefore be dismissed. The Decree Holder should move the court to execute within the 60 days. Costs to be in the cause.

DATED and DELIVERED this 7th day of June, 2012.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Koech holding brief for Mr. Omingo for the plaintiff

N/A for the defendant

Kennedy – Court Clerk