

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Civil Suit 21 of 2002

DR. JAMES MURIUKI.....PLAINTIFF/APPLICANT

VERSUS

**NATIONAL BANK OF KENYA LTD.....1ST DEFENDANT/APPLICANT
LEGACY AUCTIONEERING SERVICE....2ND DEFENDANT/RESPONDENT**

RULING

The Notice of Motion dated 3/2/2012 was filed by the 1st defendant applicant, pursuant to Order 17 Rule 2, 51 Rule (1) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The applicant seeks an order that this suit be dismissed for want of prosecution because 6 years have lapsed without the plaintiff setting it down for hearing; that the plaintiff is indolent and seems to have no intention to prosecute the suit in the near future and the continued subsistence of the suit has prejudiced the applicant. The applicant contends that litigation must come to an end and the plaintiff will not be prejudiced in any way if the order is granted.

The court is satisfied that both Cheboi and Co. Advocates for the 2nd defendant and Ochieng Gai Advocates for the plaintiff were duly served as evidenced by the affidavits of service filed herein on 5/6/2012 sworn by Peter Musyoka Kisilu, the counsel did not appear or file any reply. The application proceeded ex-parte.

This suit was filed way back in 2002 about 10 years ago. The last step taken by the plaintiff in this matter was on 12/6/2006 when an amended plaint was filed and the defendants filed an amended defence and counter claim on 3/7/06. Since then all the parties have gone to sleep. Under Order 17 Rule 2(3) any party to a suit may apply for dismissal of a suit if no application has been made by either party for one year, by giving notice in writing to the parties. As noted above, it is six years since any step was taken by any of the parties in this matter. The parties have been duly notified. They are not interested in the suit anymore. Litigation must come to an end. I therefore grant the order that this suit be dismissed with costs to the 1st defendant.

DATED and DELIVERED this 6th day of June, 2012.

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

PRESENT:

N/A for the plaintiff/respondent

Mr. Maragia holding brief for Ms Omwenga for the defendants/applicants

Kennedy – Court Clerk