



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMAN COMMERCIAL COURTS**

**CIVIL CASE NO. 109 OF 2000**

**D. O. SONGA JAMES M. OGONDA T/A SONGA OGODA AND  
ASSOCIATES.....PLAINTIFFS**

**VERSUS**

**RELI CO-OPERATIVE SAVINGS AND CREDIT SOCIETY  
LTD.....DEFENDANTS**

**RULING**

1. The Notice of Motion dated 22<sup>nd</sup> June, 2010 is taken out by the defendant. It seeks for an order that the plaintiff's suit against the defendant be dismissed for want of prosecution. This application is supported by the grounds stated on the body of the application and the facts deposed to in the supporting affidavit sworn by **Onsando Osiemo** on 22<sup>nd</sup> June, 2010. It is contended that the plaintiff filed this suit on 26<sup>th</sup> January, 2000. Pleadings closed on or about 24<sup>th</sup> February, 2000. However, over the years, the plaintiff failed to take any steps to prosecute this matter, and the last time the suit was in court was 27<sup>th</sup> November, 2008. Counsel urged the court to be guided by the provisions on Order 16 Rule 5(d) of the Civil Procedure Rules, and dismiss the suit for want of prosecution.
2. This application was opposed; Counsel for the plaintiff submitted that under the provisions of Order 16 Rule 5(d) there is an obligation on the part of the defendant as well to fix the case for hearing. The defendant has not shown that they have taken any steps to fix the matter for hearing. He urged the court not to dismiss the suit, but to direct it to be fixed for hearing which will be in the best interest of justice.
3. The record of proceedings in this case shows there is undue laxity on the part of the plaintiff. The matter was lastly stood over generally on 2<sup>nd</sup> December, 2005. On 27<sup>th</sup> November, 2008 the matter came up for hearing but parties did not attend court because a notice had not been served and it was stood over generally. The plaintiff has not offered any explanation why no steps have been taken to fix this matter for hearing. Although the defendant could on their part fix it for hearing, the rules gives them the option to apply for the matter to be dismissed for want of prosecution under the provisions of Order 16 Rule 5

(d) which provides that:-

*“If within three months after the close of pleadings Or the removal of suit from the hearing list of the adjournment of the suit generally, the plaintiff or the court on its motion On notice to the parties does not set down the suit for hearing The defendant may either set the suit down for hearing Or apply for its dismissal.*

4. The defendant exercised their option to have this suit dismissed for want of prosecution. Since there are no cogent or any reasons or any reason whatsoever offered by the plaintiff why no steps have been taken to prosecute the matter, I have no hesitation to grant the orders sought. Accordingly, the plaintiff's suit is hereby dismissed with costs to the defendant.

RULING read and signed at Nairobi this 10th day of January 2011.

**M. K. KOOME**

**JUDGE**