



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MILIMANI LAW COURTS**  
**CIVIL CASE NO 724 OF 2006**

**VIRGIN SPIRIT TRAVEL LIMITED.....PLAINTIFF/RESPONDENT**

**VERSUS**

**MAASAI MARA KOIYAKI LEMEK WILDLIFE  
TRUST.....DEFENDANT/APPLICANT**

**RULING**

The Notice of Motion dated 28<sup>th</sup> June 2011 is filed by the Defendant to seek prayers *inter alia* that the suit herein be dismissed for want of prosecution as provided in Order 17, Rule 2(3) of the Civil Procedure Rules 2010. The application is based on the grounds set forth on its face and on the Supporting Affidavit sworn on 28th June 2011 by the treasurer and trustee of the Defendant, Francis Nkoitoi.

The reason for the prayer is on the ground that since the suit was last adjourned on 16<sup>th</sup> June 2008, the Plaintiff has failed to take any action on fixing the suit for hearing.

The Plaintiff's advocate Mr. Kariuki Muigua has sworn a Replying affidavit on 17th October 2011 and grounds of opposition dated 14<sup>th</sup> October 2011 in opposition to the application. As can be seen from the said affidavit the Plaintiff has been engaging firstly with application to amend the Plaint of 14<sup>th</sup> July 2008 and thereafter up to 21st July 2011 to trace the file which was not available since 1st October 2008. The affidavit has annexed the relevant letters mentioned in the affidavit. I may then state that the Plaintiff has reasonably explained the delay which, in circumstances of this case, cannot be termed as inordinate.

It is also trite that the court shall take the drastic remedy of dismissal of a suit as the last resort. I do not think the court has reached that stage.

In view of the premises I dismiss the application on hand. The cost of the application shall be in the cause.

Orders accordingly

**Dated, signed and delivered** at Nairobi this 16<sup>th</sup> day of November, 2011.

**K H RAWAL**  
**JUDGE**  
**16.11.2011**