

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 160 of 2005

RIFT VALLEY & GENERAL SUPPLIES LTD.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LTD.....DEFENDANT

RULING

I have before me a Notice of Motion brought by the defendant under **Order 16 Rule 5(a)** and **Order 50 Rule 1** of the **Civil Procedure Rules** as well as **Section 3A** of the **Civil Procedure Act** seeking the dismissal of this suit for want of prosecution. Though served the plaintiff did not file any grounds of opposition or replying affidavits or even appear at the hearing to oppose it.

This was a case in which the plaintiff sought to restrain the defendant from selling its property in exercise of its statutory power of sale. When its application for injunction in that regard was dismissed and its charged property sold, it would seem the plaintiff lost interest in this case. In the circumstances, I agree with Mr. Murimi for the defendant that since the pleadings closed over 21 months ago the plaintiff has not taken any step to fix this case for hearing. Consequently I allow this application and dismiss this suit with costs for want of prosecution.

The appellant shall also have the costs of this application.

SIGNED, DATED and DELIVERED at Nakuru this 31st day of March, 2010.

D. K. MARAGA
JUDGE.