



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI
CIVIL CASE NO.1514 OF 2001

ERIC KIBET KOROS BOMET.....1ST PLAINTIFF
TRANSKENYA GREEN GROWERS RONGAI LIMITED.....2ND
PLAINTIFF
VERSUS
NATIONAL BANK OF KENYA LTD.....1ST
DEFENDANT
GARAM INVESTMENTS2ND DEFENDANT

R U L I N G

This application is brought by a Chamber Summons dated 9th February, 2010, and taken out under **Order XVI Rule 5** of the **Civil Procedure Rules** and the inherent jurisdiction in this Court. The 1st Defendant applies for orders that this suit be dismissed with costs for want of prosecution. The application is supported by the annexed affidavit of John Ochwo, Advocate, and is based on the grounds that the suit was last in Court on 5th March, 2003, when the Plaintiffs’ injunction application was dismissed, and since then the Plaintiffs have never taken any action with a view to prosecuting the suit.

When the application was called out for hearing, Mr. Ochwo appeared for the Applicant but the Plaintiffs neither attended nor were they represented. After noting that the hearing date was given by the Presiding Judge in open Court in the presence of Counsel for both sides, the Court decided to proceed *ex parte*.

Mr. Ochwo for the Applicant told the Court that the application before the Court sought dismissal of the suit for non prosecution and he relied on his own supporting affidavit and the grounds on the face of the application. He further stated that the matter last came to Court in 2003 and since then nothing had been done. He therefore applied for orders as prayed, with costs.

A scan of the Court file discloses that there had been filed at Nakuru **HCCC No. 182 of 2006** which was similar to this one. The parties in the case at Nakuru were the same as those in this case, save and except that the case filed in Nairobi being **HCCC No.1514 of 2001** (Milimani) had Messrs Garam Investments joined as 2nd Defendants. By a ruling dated 2nd March, 2007, Hon. Lady Justice Koome, sitting at Nakuru, directed that the case filed at Nakuru be consolidated with the one in Nairobi. Nakuru **HCCC No.182 of 2006** was subsequently discontinued by a notice of withdrawal/discontinuance dated 27th September, 2007, and filed in Court on 28th September, 2007, by Otieno Okeya & Co, Advocates for the Plaintiff. Thereafter, Mr. C. Bomet Fraser, suing as a representative of the estate of Erick Kibet Bomet (deceased) filed a notice to act in person on 15th July, 2009. On the same date, he also filed a notice of withdrawal/discontinuance of **Civil Suit No. 182 of 2006** (Nakuru) consolidated with Nairobi **HCCC**

No.1514 of 2001 (Milimani). Even as he was filing that notice of withdrawal on 15th July, 2009, the same suit had already been withdrawn by Otieno Okeya & Co., Advocates, by a Notice filed in Court on 28th September, 2007.

In these circumstances, the suit sought to be dismissed is non-existent as it has long since been withdrawn and discontinued. I accordingly strike out the application for the dismissal of the suit with leave to the Applicant to file an appropriate application for costs.
It is so ordered.

Dated and delivered at Nairobi this 29th day of July, 2010.

L. NJAGI

JUDGE