



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Suit 1086 of 2000**

**WEM FREIGHT CONSULTANTS LIMITED.....1<sup>ST</sup> PLAINTIFF**

**WASHINGTON NTEERE IKUNYUA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**THE LIQUIDATOR OF EURO BANK LIMITED (IN LIQUIDATION...1<sup>ST</sup> DEFENDANT**

**SOLOMON MUTHAMIA .....2<sup>ND</sup> DEFENDANT**

**CITY SQUARE PROPERTIES LIMITED.....3<sup>RD</sup> DEFENDANT**

**RULING**

This is a Notice of Motion application brought under Order XVI rule 5(d) and Order 50 Rule 1 of the Civil Procedure Rules dated 12<sup>th</sup> August, 2008. It seeks two orders:

1. The suit herein be dismissed for want of prosecution
2. That the costs of this application and of the suit be borne by the Plaintiffs in any event.

The grounds upon which the application is based are on the face of the application as follows:

- (a) The suit has not been set down for further hearing or any steps taken towards disposing the suit since 26<sup>th</sup> April 2007 when the firm of Ndirangu Kamau & Company came on record for the Plaintiffs.
- (b) The delay by the Plaintiffs in taking the necessary steps to set down the suit for hearing is inordinate, unreasonable and inexcusable.
- (c) That the delay in setting down the suit for hearing will prejudice the fair trial of the issues in dispute and it is otherwise an abuse of the due process of this Honourable Court.
- (d) The 1<sup>st</sup> Defendant will further rely on the matters on record and other or further reasons to be adduced at the hearing hereof.

Mr. John Morris Ohaga has sworn an affidavit dated 19<sup>th</sup> July 2008 in support of the application.

Despite being served, neither the Plaintiff nor their Advocates came for the hearing of the application. No papers were filed in opposition to the application either.

I have considered the submissions made by Ms. Nyambura for the 1<sup>st</sup> Defendant/Applicant. I also had an occasion to peruse the file. I note that the matter was mentioned before the court on 14<sup>th</sup> October, 2008 where all parties were present. The mention was before Hon. Kihara, J. The learned Judge ordered that the matter should be mentioned before the court on 24<sup>th</sup> October, 2008 with a view to recording a consent on the application dated 12<sup>th</sup> August, 2008. I note that on the 24<sup>th</sup> October, 2008 when the matter came before me for mention, the Plaintiff's advocate was not in court.

It is my view that the Plaintiff has lost interest in the matter. The delay in prosecuting the case has been inordinate since the matter was filed in 2000. There was an interlocutory judgment entered in 2000 and judgment upon formal proof delivered in December, 2003. That judgment was set aside by consent in 2004. Since then the case has never proceeded to hearing.

Having carefully considered the circumstances of the case I find that the Plaintiff has lost interest in the matter, and I therefore dismiss this suit for want of prosecution with costs to the Defendants.

Dated at Nairobi, this 30<sup>th</sup> day of January, 2009.

**LESIIT, J.**

**JUDGE**

***Read, signed and delivered, in the presence of:***

Ms. Nyambura for the 1<sup>st</sup> Defendant/Applicant

Ms. Lavuna holding brief Mr. Katwa for Respondent

**LESIIT, J.**

**JUDGE**