



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**  
**Civil Case 66 of 2004**

**KIPKURUI ARAP LANGAT .....PLAINTIFF/APPLICANT**

**VERSUS**

**NATIONAL BANK OF KENYA .....DEFENDANT/RESPONDENT**

**RULING**

***Application dated 28<sup>th</sup> May, 2008 seeking orders to dismiss this suit for want of prosecution***

**I: Procedure**

1. The application dated 28<sup>th</sup> May, 2008 seeks orders to dismiss the main suit herein filed by the Plaintiff/Respondent on 29<sup>th</sup> June, 2004 for want of prosecution.
2. The said Plaintiff/Respondent having been served failed to attend Court on the day called out for hearing of this application. The matter proceeded in his absence under **order Ixb r 3(a)** Civil Procedure Rules when this Court was satisfied that he had been duly served.

**II: Background**

3. The Plaintiff/Respondent had entered into a contract with the Defendant/Applicant to borrow sums of moneys from the bank amounting to Kshs. 300,000/=. He defaulted in payment and the said bank wished to execute against the default of payment. The Plaintiff filed this suit on the 29<sup>th</sup> June, 2004 and sought orders of injunction to restrain the Applicant/Defendant bank from executing on the sale of his security.
4. Since 28<sup>th</sup> October, 2004 no action had been taken on this file. The Defendant/Applicant thereafter filed this current application seeking to dismiss this whole suit for want of prosecution.

**III: Application /Opinion**

5. The law under **Order XVI r 6** Civil Procedure Rules requires that where no action to a suit has been taken for three years the Court may suo moto dismiss the suit without notice to any parties. Under **order XVI r 1(2)** Civil Procedure Rules the matter or suit is left pending for one year with no action the Court may issue a notice to a party then on day the matter is mentioned dismiss the suit.
6. Under **order XVI r 5** Civil Procedure Rules an Applicant may apply to Court after three months to set the suit for hearing or have the matter dismissed.
7. In this application before me the Defendant has opted to apply to Court to dismiss the said suit for want of prosecution. They do so after four to five years having now expired.
8. I find that herein that the application has merits. The same is allowed and this Court makes orders to dismiss this suit with costs to the Defendant/Applicant on grounds that the plaintiff has failed to prosecute

this suit.

**DATED** this 18<sup>th</sup> day of March, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocates**

I.O. Meroka advocate from M/S Meroka & Co. advocates instructed to hold brief for M/S Githiru & Co.  
Advocates for the Applicant/Defendant – present

N/A for N/A Koech J.K & Co. advocates for the Respondent/Plaintiff