



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL SUIT 421 OF 2005**

**KENYA AIRPORTS AUTHORITY.....1<sup>ST</sup> PLAINTIFF\RESPONDENT**

**MR. GEORGE MUHORO..... 2<sup>ND</sup> PLAINTIFF\RESPONDENT**

**v**

**THE STANDARD LIMITED..... 1<sup>ST</sup> DEFENDANT\APPLICANT**

**MANAGING DIRECTOR,**

**THE STANDARD.....2<sup>ND</sup> DEFENDANT\APPLICANT**

**DOUGLAS OKWACH..... 3<sup>RD</sup> DEFEDANT\APPLICANT**

**RULING**

The Defendants, through a Noticed Motion dated 29<sup>th</sup> October 2008 and brought under Order XVI Rules 5 (c) of the Civil Procedure Rules have applied for the dismissed of this suit for want of prosecution on the ground that for nearly a year since the matter was supposed to come up for hearing but the same was not listed for lack of confirmation at the call over, the suit had not been fixed for hearing.

The Plaintiffs oppose the application on the ground that they could not get a hearing date because the court diary was full for whole year.

I have read and considered filed affidavits as well as written submissions for and against the Notice of Motion

While noting that it is incumbent upon the Plaintiffs to do all that is possible to ensure that the suit is heard within a reasonable time and that the Respondents attempts in this case are few and this could be due to lack of keenness by the Plaintiff's counsel who could take a hearing date, for example, and subsequently fail to have it confirmed at the call over, I think that in the circumstances of this case, where there is a lot left to imagination and guessing, the delay would not be inexcusable and since disallowing

this application does not appear to me likely to occasion grave injustice to the parties or any of them, hoping that the Plaintiffs have now learned a lesson, the said Notice of Motion be and is hereby dismissed.

However, the Plaintiffs/Respondents to pay costs of the Notice of Motion to the Defendants/Applicants.

Dated this 24<sup>th</sup> day of July 2009.

**J.M. KHAMONI**

**JUDGE**