

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Case 466 of 1999

DAVID KAMAU NDIRANGU.....PLAINTIFF

VERSUS

GATEWAY INSURANCE.....DEFENDANT

RULING

This is a Motion dated 8th January, 2004 for dismissal of this suit for want of prosecution brought pursuant to Order 16 Rule 5 of the Civil Procedure Rules. The application does not provide under which of the sub-rules ((a) (c) or (d)) it is brought.

But the applicant, thought its counsel has deposed that the respondent has not set down the suit for hearing since 12th February, 1997. The respondent brought this suit against the applicant claiming the value of some motor vehicle parts allegedly stolen from the respondent's motor vehicle which was insured by the applicant. That suit was filed some thirteen (13) years ago on 18th September, 1996.

With leave of the court, the respondent filed an amended plaint on 12th February, 1997. On 10th February, 2004 after nearly seven (7) years from the date the amended plaint was filed, the applicant brought the present application.

H.C.C.C.NO.466/96

I have perused the record and it is abundantly clear to me that although the respondent has not prosecuted its claim against the applicant, the application dated 8th January, 2004 was withdrawn by counsel for the applicant on 3rd May, 2004. There is therefore no application before me for determination. I would have moved under Order 16 Rule 6 but for the fact that the respondent filed an application on 17th November, 2005 which was not heard as there was no judge at the station when it was stated for hearing on 25th January, 2006, I say no more in the matter since there is no application before me.

DATED, SIGNED and DELIVERED at Nakuru this 21st day of July, 2009.

W. OUKO

JUDGE