



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 3185 OF 1995

1. JOSEPH OUMA OGUTU
2. JOSEPH OKARE OGUTU
3. EDWIN OWINYO OGUTU
4. MATHEWS OGUTU
5. GEORGE OKOTH OGUTU
6. OWINO IOGUTU
7. OTIENO OGUTU..... PLAINTIFFS/RESPONDENTS

VERSUS

INDUSTRIALANDCOMMERCIAL CORPORATION.....1ST
DEFENDANT/RESPONDENT

DENHARN DAVID ODHIAMBO OGUTU..... 2ND
DEFENDANT/APPLICANT

RULING

This Notice of Motion dated 16th March 2009 was filed by the Second Defendant in this suit praying that the Plaintiffs suit be dismissed for want of prosecution – under Order XVI Rule 5 (d) of the Civil Procedure Rules. Section 3A of the Civil Procedure Act was also mentioned but I do not think it is required or important.

The important ground for the Notice of Motion is that over fourteen (14) years have lapsed since the matter was last in court about 5th December 1995 yet the Plaintiff has not taken any practical steps to prosecute the matter. The Plaintiffs therefore seem to have lost interest in the suit and it is fair that the suit be dismissed for want of prosecution.

The First Defendant informed the court through its present advocate Mr. W.K. Cheptumo, that it supported the Second Defendant's Notice of Motion.

Evidence was tendered that the Plaintiff were duly served through their present advocates M/s N.O. Sumba & Company but they never responded. Hearing before me has therefore proceeded in their absence. They had not filed any opposition to the Notice of Motion though served.

In the circumstances, I have no good reason to reject the said Notice of Motion bearing in mind what Mr. Gitangi for the Applicant First Defendant, and Mr. Odongo for the Second Defendant, told me during the hearing. Accordingly this Notice of Motion dated 16th March 2009 be and is hereby dismissed as prayed.

Dated this 17th day of July 2009.

J.M. KHAMONI

JUDGE