

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 1165 of 2002

EAST AFRICAN PORTLAND CEMENT CO LTD.....PLAINTIFF

VERSUS

**PRECISE RENOVATORS & DECORATORS LTD.....1ST
DEFENDANT**

BENARD KINGARA

T/A PRECISE RENOVATORS & DECORATORS.....2ND DEFENDANT

RULING

A Notice to show cause why the suit should not be dismissed under Order 16 rule 2(1) was issued in this matter, it came for hearing on 13th November 2009. Counsel for the defendant supported the notice to have the suit dismissed on the grounds that no steps have been taken since 18th October, 2006. However counsel for the plaintiff opposed the notice to have the suit dismissed for want of prosecution. He relied on a detailed affidavit sworn by Shila Kahuki, a legal officer of the plaintiff.

It is contended that the court diary closed, therefore the plaintiff was not able to get a hearing date, moreover, there was default judgment against the second defendant which was entered on 21st February 2008. The plaintiff has been trying to trace the 2nd defendant to execute the decree without success. For those reasons counsel urged the court not to dismiss the suit for want of prosecution.

I have gone through the pleadings in this matter and also the record of proceedings. There were concerted efforts by the plaintiff to have this matter heard, but there is lull from 21st February 2008, when the plaintiff obtained judgment against the 2nd defendant. It is contended that the court diary has not been available and that the plaintiff has been making attempts to execute against the 2nd defendant. I am prepared to exercise my discretion and allow the plaintiff a further period of three months (3) within which to fix this matter for hearing. Failure to do so, this suit shall stand dismissed for want of prosecution with cost to the 1st defendant. The 1st defendant shall also have costs in respect of this notice to show cause.

Ruling read and signed on 27th November 2009

M. KOOME

JUDGE

