

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Suit 86 of 2003

JOSEPH KIBANGA'S KENDUIWA.....PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LTD.....DEFENDANT

RULING

By its chambers summons dated 16th March 2007, the defendant has applied under **Order 16 Rule 5D** of the **Civil Procedure Rules** for the dismissal of this suit for want of prosecution. The application is supported by the affidavit of Mr. Mark Nganga Githiru, counsel for the Defendant, in which he has deposed that since the filing of the suit and obtaining ex-parte orders of injunction on 10th June 2003 the plaintiff has not taken any step to have this suit fixed for hearing.

Having perused the file I agree with counsel for the defendant that since 10th June 2003 when the plaintiff filed this suit and obtained ex-parte orders of injunction he has done absolutely nothing to have the case heard. He was not even keen to prosecute the application for injunction. On the few occasions it was fixed for hearing it was at the instance of the defendant's counsel. On 15th May 2004 when the application was fixed for hearing inter-partes neither the plaintiff nor his counsel appeared and the application was dismissed for want of prosecution. Since then the plaintiff has done nothing to have the case heard. Not even service of this application upon his counsel has moved him. In the circumstances I allow this application and dismiss this suit for want of prosecution with costs including the costs of this application to the defendant.

DATED and delivered this 18th day of November, 2009.

D. K. MARAGA

JUDGE.