

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 116 of 2005

SAVLA INTERNATIONA LIMITED PLAINTIFF

VERSUS

ACME CONTAINERS LIMITED DEFENDANT

RULING

A notice to show cause why this suit should not be dismissed for want of prosecution came up for hearing on 3rd September 2009. Mr. Jaoko for the plaintiff submitted orally that since the list of issues was filed in July 2007 Mr. Wamalwa who was the advocate for the plaintiff had lost contact with the client for some time. However, recently the plaintiff gave instructions that the matter be fixed for hearing. Counsel for the plaintiff has not taken any steps to fix this matter for hearing since July 2007 even after contending the plaintiff instructed them to fix a hearing date this is not borne by the court record.

Miss Nduku counsel for the defendant supported the notice to have the suit dismissed for want of prosecution because the plaintiff has not taken any steps to prosecute the matter since July 2007.

Under the provisions of **Order XVI rule 2(1)** it is provided that:

“In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit”

It is evident from the court record that the plaintiff has not taken any steps since July 2007 to prosecute this matter. This suit was filed in March 2005; it is the duty of the plaintiff to ensure that steps are taken to prosecute the matter. The court is also concerned about the delay caused by parties who file suits and fail to take action to prosecute them. This is hampering the delivery of justice and clogging the court system. The plaintiff has not shown any sufficient cause why it has not taken any steps to prosecute this matter and no cause has been shown why the suit should not be dismissed for want of prosecution. Accordingly, the suit is hereby dismissed with no order as to costs since the notice emanated from the court.

RULING READ AND SIGNED ON 13TH NOVEMBER 2009 AT NAIROBI.

M.K. KOOME

JUDGE