



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 807 of 2003**

**FRANCIS NGIGE NYOIKE.....1<sup>ST</sup> PLAINTIFF**

**WAIGI PAINTS & HARDWARE LIMITED.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**K-REP BANK LIMITED.....DEFENDANT**

**RULING**

The application is a Notice of Motion dated 4<sup>th</sup> September, 2006 expressed to be brought under Order XVI rule 5(a) and Order L rule 1 of the Civil Procedure Rules. It seeks an order that this suit be dismissed for want of prosecution as the Plaintiff has not taken any action to prosecute it. It also seeks the costs of the application and of the suit.

The application is supported by the affidavit of J. A. Ougo, Advocate who also argued the application on behalf of the Defendant/Applicant. Despite being served with this application, the Plaintiffs/Respondents have filed no papers and neither were they or their counsel present when this application was argued.

I have considered this application and the contents of **Mr. Ougo's** affidavit. The record itself bears out **Mr. Ougo's** averments that indeed since filing this suit simultaneously with an application for injunction, and since the application was dismissed on 16<sup>th</sup> July, 2004, no further step was taken by the Plaintiffs to prepare the suit for hearing. I agree with Mr. Ougo that the Plaintiffs seem to have lost interest in their case. I will allow the application as prayed. The Applicant will get the costs of the application and of the entire suit.

**Dated at Nairobi this 18<sup>th</sup> day of April, 2008.**

**LESIIT, J**

**JUDGE**

Read, signed and delivered in the presence of:

Mr. Kingara holding brief Mr. Ougo for applicant

**LESIIT, J**

**JUDGE**