



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KAKAMEGA**

**Civil Case 121 of 1993**

**SHADRACK SHIKOMERE KHALISIA ..... PLAINTIFF**

**V E R S U S**

**THE MANAGING EDITOR**

**STANDARD NEWSPAPER ..... 1<sup>ST</sup> DEFENDANT**

**ALPHONCE MUNGAHU ..... 2<sup>ND</sup> DEFENDANT**

**R U L I N G**

The defendants have applied for the dismissal of the suit for want of prosecution.

It is their contention that for a period of 16 months, from 2<sup>nd</sup> May, 2006, the plaintiff had failed to take any steps to prosecute the suit.

It is the defendants case that since 21/4/1993 when the suit was filed, the plaintiff had continuously delayed the prosecution thereof.

Consequently, the defendants say that the delay in the prosecution of the case constitutes an abuse of the process of the court, and that it has caused prejudice to the defendants.

On his part, the plaintiff believes that the application was ill-conceived, because the suit had already been set down for hearing.

To my mind the application stands or falls on the significance of the hearing date which the plaintiff has fixed.

First and foremost, there is no doubt that by having the case set down for hearing, the plaintiff had taken a step in the proceedings.

Secondly, the said step was taken on 25/9/2007, which was before the defendants brought the application for dismissal of the suit for want of prosecution.

Thirdly, and more significantly, the defendants were served with the Hearing Notice before they filed the application.

To my mind, as soon as the defendants were served with the Hearing Notice, they ought not to have gone ahead to thereafter file this application.

I therefore agree with the plaintiff, that the application is ill conceived. It is therefore dismissed with costs.

*Dated, Signed and Delivered at Kakamega, this 25<sup>th</sup> day of June, 2008*

**FRED A. OCHIENG**

**J U D G E**