



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1218 of 2007

TROPICAL NECTOR LTD PLAINTIFF

VERSUS

FUTURE ESTATES LTD DEFENDANT

RULING

APPLICATION TO DISMISS SUIT

FOR WANT OF PROSECUTION 23 OCTOBER 2007

1: Background

1. The main Originating Summons prays for the removal of a caveat. It was filed on 7 November 2003.
2. By an application of 23 October 2007, the advocate for the respondent stated that the said case ought to be dismissed for want of prosecution. Since the matter had been last to court no action had been taken for over 3 months. The said respondent and applicant in the notice of motion stated that the suit be dismissed.

II: In reply

3. The applicant respondent in the applications stated that the suit was partly finalized. He obtained his orders for removal of the caveat what awaits is the issue of damages. Nonetheless he was asked to go for direction of the suit but failed to do so. It is this inactivity that the respondent/applicant takes issue with including that of directions.

III: Opinion

4. The court noted that the next step in this matter was that of directions under Order 36 r 8 a 12 Civil Procedure Rules. This is an application that is filed by either party. That is the reasons why the words “may” is included is to signify that either party may take direction.
5. The advocate for the respondent should have set the matter down for direction. It is not necessarily the applicant/respondent alone who does this.

6. Once the matter is set down for directions and no activity is done within 3 months then should an application be filed for want or prosecution and not before.

7. I accordingly dismiss the application with costs to the respondent.

DATED THIS 12TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

F.M. Mulwa of F.M. Mulwa & Co. Advocates for the plaintiff/respondent - present

K. Waweru & Co. Advcoates for 2nd defendant/respondent - present

P.O. Mungla of Rachier & Amollo & Co. Advocates for the 1st defendant/applican