

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Case 123 of 2000

EUNICE JEPKEMEI TOROITICH.....PLAINTIFF

VERSUS

HOUSING FINANCE CO. (K) LTD.....DEFENDANT

RULING

In its notice of motion dated 31st January 2008, the defendant seeks under **Order 16 Rule 5(c)** and **(d)** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**, the dismissal of this case for want of prosecution on the ground that the plaintiff appears to have lost interest in the case as she has not taken any step to prosecute it. Although served the plaintiff has not even attempted to oppose this application.

I agree with the averments in the affidavit of Mr. Kisilah Daniel Gor in support of the application that since the close of pleadings on or about 20th April 2000, the plaintiff has not taken any step to prosecute this case. After filing this suit and obtaining an interlocutory injunction which was later set aside, the plaintiff has exhibited an unenthusiastic attitude towards this case. The three hearing dates on 4th April 2005, 22nd June 2006 and 17th November 2006 were all taken by the defendant.

In the circumstances I agree with counsel for the defendant that the plaintiff has no interest in this case. Consequently I allow the defendant's said application and dismiss this suit with costs including those of this application for want of prosecution.

DATED and delivered at Nakuru this 17th day of July, 2008.

D. K. MARAGA

JUDGE