



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 776 of 2006**

**NYANGIRY BWONDITI & ANOTHER ..... 1<sup>ST</sup> PLAINTIFF/RESPONENT**

**Vs**

**JAMES MASILA MUTUA. & OTHER ..... 1<sup>ST</sup> DEFENDANT/APPLICANT**

**ALEX ANAMBO T/A NAMBO & CO. ADVOCATES..... ..2<sup>ND</sup> DEFEDNANT**

**RULING**

This Notice of Motion dated 26<sup>th</sup> May, 2008 brought by the 1<sup>st</sup> Defendant seeking to have the Plaintiff's suit dismissed for want of prosecution could have easily been allowed but the way it has been prosecuted forces me not to do so.

While the application is properly brought under Order XVI Rule 5 (a) and Order L Rule 1 of the Civil Procedure Rules, looking at the grounds in support of the application as stated on the face of the Notice of Motion and proceeding to look at the supporting affidavit, tells me that it is not correct to stay the application is under order XVI Rule 5(a).

That being so, where do we go? That explains why learned counsel for the Applicant kept on talking without mentioning a specific date and would only mention one if I insisted that he does so only for the learned counsel for the Respondent to easily dislodge him without reply even though the grounds of opposition were not grounds which could have stood the test under Order XVI Rule 5(a).

Accordingly the said Notice of Motion is hereby dismissed with costs to the Plaintiffs/Respondents.

Dated this 17<sup>th</sup> day of July, 2008.

**J.M. KHAMONI**

**JUGDE**