

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Case 153 of 1999

NAIVACO COMPANY LTD.....PLAINTIFF

VERSUS

HOUSING FINANCE CO. OF KENYA LTD....DEFENDANT

RULING

NAIVACO COMPANY LIMITED filed this suit on 8th April 1999 complaining that though the defendant, which had advanced some funds to it, was not furnishing it with the statements of the account, it had threatened to realize the security - Title Number Naivasha/Maraigushu Block 1/1068 - which secures the advance. It therefore sought an injunction to restrain the defendant from realizing that security until the defendant supplied it with the statements of account.

Along with the suit, the plaintiff filed an application for injunction and obtained an ex-parte injunction restraining the defendant from auctioning its said property. On the defendant's application that injunction was vacated on 8th December 1999. Since then the plaintiff has not taken any step to have the case heard.

By its application dated 15th January 2008 and brought under **Order 16 Rule 5(a)** of the **Civil Procedure Rules**, the defendant seeks the dismissal of this suit for want of prosecution. Though served with the application the plaintiff has not been moved. It has not even belatedly attempted to fix the case for hearing or even oppose this application. That is clear manifestation that the defendant has no further interest in this suit. In the circumstances I accede to the defendant's plea and hereby dismiss this suit for want of prosecution. The defendant shall have the costs of both this application and those of the suit.

DATED and delivered at Nakuru this 16th day of October, 2008

D. K. MARAGA

JUDGE