

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 3016 of 1997

APRICOT APPLE PROMOTIONS.....PLAINTIFF

VERSUS

STANBIC BANK LIMITED.....
.....DEFENDANT

RULING

1. The application before me is the Notice of Motion dated 16/05/2005 brought under Order XVI Rule 5(a) and (c) and Order L Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law seeking orders that the Plaintiff's suit be dismissed for want of prosecution. The Defendant also pray for costs of the application.
2. The Applicant says that the Plaintiff has failed and/or neglected to set down this suit for hearing and that in view of the delay of almost 8 years, a fair trial will not be possible. The Applicant further says that since justice delayed is justice denied, the Plaintiff's suit should be dismissed for want of prosecution.
3. The application is also supported by the sworn affidavit of **Collins Namachanja** dated 16/05/2005. The deponent says that this matter was fixed for the hearing of Summons for Directions on 27/03/2000. That the issues were agreed on that day save Orders 10 and 11 of the Civil Procedure Act which both parties were ordered to comply with before 4/05/2000. That on 4/05/2000, the matter was stood over to 7/06/2000 for compliance but that on the said date, the matter was not listed on the days Cause List and that since then, the Plaintiff has taken no step whatsoever to set the suit down for hearing. The deponent concludes by saying that the Plaintiff has lost interest in his case which should now be dismissed for want of prosecution.
4. The application was duly served upon the Plaintiff by way of Registered Post on 7/05/2007. A hearing notice was also served upon the Respondents by way of registered post to Plaintiff's counsel, M/s Wanja Kirimi & Company Advocates on 21/08/2005. The Respondents have not filed any Replying pleadings to the application, nor did they appear at the hearing of the application when the same came up for hearing on 16/10/2008.
5. I have considered the application as filed. I have also considered the law applicable to this case. I have further considered the Supporting Affidavit and the submissions made to me by Learned Counsel Mr. Gichuki for the Applicant. After considering all the above, and also after considering the court record, I am satisfied that the Plaintiff has lost interest in this case. I note that leave to serve the Plaintiff by substituted service was granted on 20/06/2008. The Plaintiff was duly served by registered post pursuant to the said leave. As there has been no response from the Plaintiff as directed by court to do so within 21 days, I find and hold that the Plaintiff/Respondent does not wish to proceed with the case.
6. In the circumstances, I allow the Defendants application dated 16/05/2005 and hereby dismiss the Plaintiff's suit for want of prosecution under the provisions of Order XVI Rule 5(a) and (c) of the **Civil Procedure Rules**. **The Applicant shall have the costs of both the application and the suit.**

It is so ordered.

Dated and Delivered at Nairobi this 20th day of November, 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:-

.....**For the Plaintiff**

.....**For the Defendant**