

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

Civil Case 2059 of 2000

WILFRED KAMAU GITHUA PLAINTIFF

VERSUS

NATION MEDIA GROUP LIMITED DEFENDANT

RULING

In this application dated 8th November, 2006, and brought under Order 16 Rule 5 of the Civil Procedure rules, the Defendant seeks dismissal of this suit for want of prosecution. According to the Defendant, no steps have been taken to prosecute this suit since 11th November, 2004.

In his Replying Affidavit, the Plaintiff states that a list of agreed issues, and a list of Documents have not as yet been filed, hence the suit is not ready for listing. He also avers that the parties have been in discussion to settle the matter, a fact that has not been controverted by the Defendant. In his submissions before this Court, the Plaintiff's Counsel further argued that the application did not state the sub-rule of Order 16 Rule 5 under which it was brought before this Court, and urged that the application be struck out. He had no authorities for that bold, and completely inaccurate proposition.

This is an old case, and the Plaintiff has been rather lethargic in prosecuting the same. The onus is on him to file the list of issues and documents. The case belongs to him, and he must take steps to move it. He cannot continue to vex the defendant with pending litigation forever. Although I am highly tempted to dismiss this suit for want of prosecution, I will give the Plaintiff one last opportunity to move forward, as I believe we should do everything reasonably possible to sustain, not kill, litigation.

I will disallow this application on the two conditions that the Plaintiff will take steps to set this suit down for hearing within the next 30 days; and pay the costs of the Defendant's application, which I assess at Kshs.25,000/= within the next 30 days. In the event of failure to comply with either of those two conditions, the Defendant shall be at liberty to apply for dismissal of the suit.

Those are the orders of this Court.

Dated and delivered at Nairobi this 11th day of November, 2008.

ALNASHIR VISRAM

JUDGE