



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

**Civil Suit 419 of 2006**

**TELEBIT TECHNOLOGIES (E.A.) LIMITED.....PLAINTIFF**

**VERSUS**

**CO-OPERATIVE BANK OF KENYA LIMITED.....DEFENDANT**

**R U L I N G**

The application is a Notice of Motion dated 10<sup>th</sup> September, 2008, brought by the Defendant under the provisions of Order XVI rule 5 of Civil Procedure Rules and section 3A of Civil Procedure Act. One order is sought which is for the dismissal of the suit for want of prosecution and for costs. The ground upon which the application is brought is that it has been over 3 years since pleadings closed and that the Plaintiff has failed to take any steps to prosecute this suit.

The application is supported by the affidavit of MERCY BUKU, the Defendant's Senior Legal Counsel, and annexures thereto. The deponent has given a summary of the case and has shown that since an ex parte order granting the Plaintiff temporary injunction on 31<sup>st</sup> July, 2006, was issued and since the Defendant entered appearance and filed defence on 28<sup>th</sup> August, 2005, no further action has been taken to have the suit heard.

The application was served on the Plaintiff but despite service no papers to oppose the application have been filed. This application is therefore unopposed.

Ms. Kagundu argued the application on behalf of the Applicant and basically counsel relied on the grounds on the face of the application and the supporting affidavit, all which I have considered.

I have perused the record of the proceedings in this file and have confirmed that the Applicant filed this suit simultaneously with an application for interlocutory injunction.

The Application was heard ex parte by Hon. Kasango, J. who gave the Applicant an interim injunction of 14 days. The Applicant was directed to serve the application and to have it set down for hearing within 14 days.

After serving the application and the interim injunction order on the Defendant, the Applicant took no further action until 26<sup>th</sup> March, 2008 when it filed a fresh application seeking an injunction.

That application was not certified urgent. Indeed the learned judge ruled that since the prayers in the plaint were at variance with the application the same could not be granted. The learned judge then directed the Applicant to take hearing dates in the Registry. None were taken.

The instant application is unchallenged as earlier stated. It is quite clear to this court that the Applicant is abusing the court process by filing a suit under certificate and then failing to take any necessary action to prosecute it. The fact that no papers were filed in response to the instant application is proof that the Plaintiff has lost interest in the case.

I find merit in the application. The case was filed under certificate and even the application itself was not prosecuted. In the circumstances the delay of 2½ years to prosecute the suit is inordinate. The application is granted as prayed and the suit dismissed with costs of the suit and of this application.

**Dated at Nairobi this 7<sup>th</sup> day of November 2008.**

**LESIT, J.**

**JUDGE**

**Read, delivered and signed in presence of:**

Ms. Kagundu for the Applicant

N/A for Respondent

**LESIT, J.**

**JUDGE**