



REPUBLIC OF KENYA

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

**Civil Case 865 of 2002**

**WILLIAM KINYANJUI (T/a AFRICAN VIRTUAL LIBRARY INITIATIVE)**

.....**PLAINTIFF**

**V E R S U S**

**KENYA INSTITUTE OF MANAGEMENT.....**  
**DEFENDANT**

**R U L I N G**

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

This is an application by the Defendant (by notice of motion dated 27<sup>th</sup> April 2006) for an order to dismiss the Plaintiff's suit for want of prosecution under Order 16, rule 5(d) of the Civil Procedure Rules (the Rules). Under the said rule, if within three months of adjournment of the suit generally, the plaintiff, or the court of its own motion on notice to the parties, does not set the suit down for hearing, the defendant may set the suit down for hearing or apply for its dismissal.

The application is supported by the affidavit of one MWANGI NGUMO who has described himself as the executive director of the Defendant. I have read the same.

The Plaintiff was duly served with the application; he did not file any papers in response. Nor was there appearance for him at the hearing of the application, which is thus unopposed.

I have considered the submissions of the learned counsel for the Defendant. Without any response from the Plaintiff, it is apparent that he has lost interest in the suit, which was filed on 22<sup>nd</sup> December, 2000. The suit was last before a judge on 19<sup>th</sup> March, 2003 for hearing; it was by consent of the parties stood over generally. Since then the Plaintiff has not taken any steps to set it down for hearing; there is no explanation for this inactivity. The delay has been prolonged and inexcusable.

In the event I will allow the application. The Plaintiff's suit is hereby dismissed with costs to the Defendant under Order 16, rule 5(d) of the Civil Procedure Rules. The Defendant will also have the costs of this application. There will be orders accordingly.

**DATED AT NAIROBI THIS 29<sup>TH</sup> DAY OF AUGUST, 2007**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 31<sup>ST</sup> DAY OF AUGUST, 2007**