



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

Civil Case 531 of 2005

DAVID PETER NG'ANG'APLAINTIFF

VERSUS

STANBIC BANK KENYA LIMITED.....DEFENDANT

RULING

The application is a Notice of Motion dated 16th August 2007 brought under Order XVI Rule 5(a), (c) and (d) of Civil Procedure Rules and Order L Rule 1 of Civil Procedure Rules. It seeks an order dismissing the suit for want of prosecution and for costs.

There are three grounds given on the face of the application as the basis of this application. These are:

- (a) That the Plaintiff has failed and/or neglected to set down this suit for hearing.**
- (b) That the Defendant continues to be prejudiced by virtue of the existing suit.**
- (c) Justice delayed is justice denied.**

There is also an affidavit sworn by **GREG KARUNGO**, in support of the application.

The application is unopposed. This application was served on the Plaintiff in person together with the hearing notice on 2nd October 2007. The Plaintiff had by then filed a Notice of Intention to Act in Person dated 25th September 2007. He did not come for the hearing of the application and so the application was unopposed and heard exparte. The Applicant's Advocate has deponed that the suit was filed on 26th September, 2005 and that it has never been set down for hearing. The defence was filed on 17th October, 2005 meaning the pleadings closed in 2005. The Advocate depones further that the two applications filed by the Plaintiff, one dated 26th September, 2005 and the other dated 16th December, 2005 have never been set down for hearing and or heard.

Mr. Karungo for the Applicant submitted that the continued delay in having the suit heard has prejudiced his client as it continues to engage Advocates and to incur costs. Counsel urged the court to dismiss the suit since the application was unopposed.

This suit was filed on 26th September, 2005 and the substantive prayer is for Mandatory Injunction compelling the Defendant to release Motor Vehicle registration number KAU 418G to the Plaintiff. The Defendant, Stanbic Bank, had agreed to finance the Plaintiff to buy the suit Chattel however, it is averred in the plaint, the vehicle was repossessed less than a month later on allegations of arrears of payment of

installments towards the Finance facility granted by the Defendant.

There was a Statement of Defence filed by the Defendant on 17th October 2005 in which it is averred that the Plaintiff failed to meet the terms and conditions set for the financing of the Hire Purchase by the Defendant Bank. Part of the terms and conditions that were not met are cited in the Statement of Defence as including the fact the Plaintiff submitted fraudulent Bank Statement to the Defendant in order to procure it to release the finances to him.

I see from the proceedings that the Plaintiff first filed an application simultaneously with the suit seeking to have the suit vehicle released to him, pending the hearing of the application and of the suit.

The court granted him on 27th September, 2005 an order stopping the Defendant from disposing off the suit vehicle until the application was heard. Thereafter on 16th December 2005, the Plaintiff withdrew this application and put in a fresh one, also under Certificate of Urgency, seeking inter alia, to have the Defendant ordered to immediately release the vehicle to him. The court declined to certify the application as urgent and directed that hearing dates be taken at the registry. Dates were taken. However when the application came for hearing on 31st March 2006 there was no appearance for the Applicant. The application was stood over generally.

Having considered the chronology of this suit, I am satisfied that there has been inordinate and inexcusable delay in setting this suit down for hearing. Considering that the subject matter is a motor vehicle, the continued delay in disposing of the suit means that the value of same is being compromised, whether or not it has since been disposed off.

The Respondent failed to come to court to oppose the application or in the very least to explain the delay. In the circumstances I find that the Plaintiff has lost interest in this case. I therefore allow the application and dismiss the suit with costs of the suit and of this application to the Applicant/Defendant.

Dated at Nairobi this 16th day of November, 2007.

LESIIT J

JUDGE

Read, signed and delivered in the presence of:

Mr. Karungo for Applicant

LESIIT J

JUDGE