



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

Civil Suit 1612 of 1999

GEORGE OMONDI PLAINTIFF

VERSUS

REILCO COMPANY LIMITED.....1ST DEFENDANT

METRA INVESTMENTS LIMITED.....2ND DEFENDANT

RATIM REALTORS LIMITED.....3RD DEFENDANT

HERMAN N. NJAMA.....4TH DEFENDANT

RULING

By a Notice of Motion brought under Order XVI Rule 5 (C) and (d) of the Civil Procedure Rules the 4th defendant seeks dismissal of the plaintiff's suit for lack of prosecution.

The application is based on the grounds that it now more than one year since the suit was adjourned generally and the plaintiff has failed to take steps to prosecute this case. That the suit which was filed in 1999 has taken unduly long to conclude and the delay is prejudicing the 4th defendant.

This matter last appeared before court on 14th December 2004 when counsel for the 1st to 3rd defendants applied for an adjournment. All the other defendants, including the applicant did not oppose that application and plaintiff too did not oppose. The ground for seeking an adjournment was on the basis of some witnesses who were out of the country and on the basis that there is a criminal case going on relevant to this case.

The adjournment was granted and 1st and 3rd defendant was condemned to pay the court adjournment fees.

The plaintiff in his replying affidavit was able to show that this case was again fixed for hearing on 27th June 2005 but the same was not reflected in the court file for non-payment of adjournment fees by the 1st to 3rd defendants. There was another invitation to take a date addressed by plaintiff's counsel to the defendant dated 20th May 2005.

It is in that background that the plaintiff was jolted by the 4th defendant's application to dismiss the suit. I

note that for the 4th defendant to be able to file the present application he had to pay the adjournment fee of kshs 1, 000/-.

I find that it would be unjust to condemn the plaintiff to a dismissal of this suit when the hearing date could not be obtained for lack of payment of adjournment fees by the 1st to 3rd defendant the application fails for that reason but being saved by those circumstances from a dismissal the plaintiff should not sit on his laurels. He needs to get on with this suit and concluded it, after all it was filed in 1999.

The ruling of this case is that the Notice of Motion dated 13th January 2006 is dismissed with no orders as to costs.

MARY KASANGO

JUDGE

Dated and delivered this 17th March 2006.

MARY KASANGO

JUDGE