

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 1234 of 2002

AIRLAND TOURS AND TRAVEL LTD.....PLAINTIFF

VERSUS

NATIONAL INDUSTRIAL CREDIT BANK LTD.....DEFENDANT

R U L I N G

The defendant has brought this Notice of Motion dated 13th December 2005, seeking the dismissal of the suit, for want of prosecution.

The primary reason for making the application was that the plaintiff had failed to take any steps to prosecute the suit since 28th April 2004.

A perusal of the court records reveals that the Plaintiff was filed in court on 10th December 2002. Alongside the Plaintiff was an application for an injunction. The said application, which was filed under a Certificate of Urgency was first heard *ex parte*, on the same day when it was filed, and an interim injunction was granted. Thereafter, the application was argued *inter partes* on 31st January 2003.

In a considered ruling which was delivered on 20th February 2003, the HON. A. G. RINGERA J. (as he then was) dismissed the application.

After filing its Defence on 11th March 2003, it is the Defendant who wrote to the plaintiff on 28th November 2003, inviting them to attend at the High Court Registry on 5th December 2003, for purposes of fixing a hearing date.

On the scheduled date and time, the defendant's advocate's clerk attended at the Registry, but there was no representative from the advocates for the plaintiff. Nonetheless, the Defendant had the case set down for hearing on 28th April 2004, and then served an appropriate Hearing Notice on the defendant's advocates.

When the case was set to commence before the HON. MUTUNGI J., the plaintiff's advocates sought an adjournment, on the grounds that Mr. Mukuria advocate was held up before another court, and also because the plaintiff's witness was reportedly unwell.

Since that date (28/4/04) the plaintiff has not taken any steps to prosecute the suit. It is for that reason that the defendant has now moved the court for the dismissal of the suit.

In the face of the application, the plaintiff's advocate has only filed an application to cease acting for their said client. In the said application, which is yet to be heard, the advocates explain that they have made several unsuccessful attempts to obtain further instructions from the plaintiff. To my mind, the plaintiff's conduct, of failing to give instructions to their own advocates, is consistent with the defendant's view that the plaintiff had no interest in prosecuting the suit. I am therefore satisfied that the defendant has made out a case for striking out the suit herein. Accordingly, the plaintiff's suit is hereby dismissed, with costs to the defendant. I also award to the defendant the costs of the application dated

13th December 2005.

Dated and Delivered at Nairobi this 28th day of July 2006.

FRED A. OCHIENG

JUDGE