

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 719 of 1997

CITYLINK TELECOM LIMITED.....
.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED.....1ST DEFENDANT

KENYA COLLEGE OF TECOMMUNICATIONS.....2ND DEFENDANT

RULING

This suit was filed in July 1997. The 1st defendant filed its defence on 24th July 2001.

This suit was lastly fixed for hearing on the 29th March 2004 when it was removed from the hearing list.

The plaintiff has failed to fix the case for hearing since 29th march 2004 and despite being served with the application to dismiss the suit for want of prosecution, filed by the 1st defendant the plaintiff did not oppose nor did it attend the hearing of that application. That inactivity obviously offends order 16 Rule 5 (c) which provides that if after suit is removed from the hearing list the plaintiff fails to refix it for hearing within three months the defendant may apply for dismissal of the suit for want of prosecution. The defendant has done just that and in the court's view the application is merited.

The court accordingly grants the following orders:

- (1) That this suit is dismissed as against the 1st defendant for want of prosecution with costs of the suit being awarded to the 1st defendant**
- (2) The 1st defendant is granted costs of the Notice of Motion dated 17th March 2006.**

MARY KASANGO

JUDGE

Dated and delivered this 10th July 2006

MARY KASANGO

JUDGE