



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL CASE NO. 935 OF 2002**

**PATRIOTIC GUARDS LTD.....PLAINTIFF**  
**VERSUS**  
**THE CO-OPERATIVE INSURANCE COMPANY**  
**OF KENYA LTD.....DEFENDANT**

**R U L I N G**

The Plaintiff's suit herein was dismissed with costs on 17th May, 2004 for want of prosecution. This was upon the Defendant's application. At the hearing of the application there was no appearance for the Plaintiff. Again when the Defendant's costs came up for taxation on 2nd August, 2004 there was no appearance for the Plaintiff despite service having been effected. However, the costs were not taxed as the taxing officer found the bill of costs to be defective and struck it out.

The Plaintiff now seeks by notice of motion dated 27th September, 2004 an order to review the order of dismissal of 17th May, 2004 upon the grounds that there are serious triable issues; that the application to dismiss the suit proceeded ex parte; and that the counsel who held brief for the Plaintiff's counsel on 17th May, 2004 did not see the matter on the cause list. The application is opposed primarily upon the grounds that the application for dismissal was not opposed in that no grounds of opposition or replying affidavit was filed and that the Plaintiff had shown laxity and lack of interest to prosecute his case.

I have read the supporting and replying affidavits. I have also given due consideration to the submissions of the learned counsels appearing. The application is brought under Order 44, Rule 1 of the Civil Procedure Rules. Yet the order of 17th May, 2004 has not been extracted. Upon this ground alone the application is incompetent.

Even upon merit I would dismiss the application. There has not been any attempt at all on the part of the Plaintiff to explain why it did not prosecute the case. What the supporting affidavit seeks to do is to explain why there was no appearance for the Plaintiff on 17th May, 2004. But on that day the suit was dismissed because the Plaintiff had not taken any steps to prosecute it, not because there was no appearance for it. The least the Plaintiff could have done in this present application was to endeavor to explain why it took no steps to prosecute the suit from when it filed it in 2002 to when it was dismissed in 2004.

I would in the event dismiss the application with costs to the Defendant. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF JANUARY, 2005.**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED THIS \_\_\_\_\_ DAY OF JANUARY, 2005**