

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL DIVISION, MILIMANI

CIVIL CASE NUMBER 3019 OF 1996

MUNYU INDUSTRIES (K) LIMITEDPLAINTIFF

VERSUS

THE LIQUIDATION AGENT PAN AFRICAN CREDIT

& FINANCE LIMITED.....1STDEFENDANT

MARCHET AUCTIONEERS (K) LIMITED2NDDEFENDANT

R U L I N G

The defendant's application dated 22nd March 2005 is brought under Order 16 Rule 5 (d) of the Civil Procedure Rules. The defendant seeks an order that the plaintiff's suit be dismissed for want of prosecution.

The plaintiff was served with the application on 7th April 2005 but by the time the matter came up for hearing, 16th May 2005, the plaintiff had not filed any reply thereof. Counsel who attended the hearing and who held brief for the plaintiff's counsel prayed for an adjournment on the basis that plaintiff's counsel was in the main registry High court in HCCC NO. 1111 of 2003 and because the parties were negotiating in the absence of their advocate. That application for adjournment was rejected. When counsel for the defendant finished her submissions, the advocate appearing for the plaintiff did not respond to those submissions.

The defendants application is based on the ground that the plaintiff has failed to set down the suit for hearing to date since the case was stood over generally on 31st January 2001 and over 49 months had since lapsed. There was no opposition to this submission and I do therefore find that the application for dismissal is merited. The orders of this court therefore are:-

- (1) That the plaintiff's suit is dismissed with costs to the defendant for want of prosecution.
- (2) That the defendant is awarded the costs fo the application dated 22nd March 2005.

Dated and delivered this 19th day of May 2005.

MARY KASANGO

JUDGE