

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL CASE NO. 109 OF 1998

J.G. BUILDERS APPLICANT

VERSUS

PLAN INTERNATIONAL RESPONDENT

RULING

By an application dated 24th November 2002 and filed in court in June 2002 under Order XVI Rule 5 of the Civil Procedure Rules, the Applicant sought to have this suit dismissed for want of prosecution.

The record shows that this suit was filed on 29th May, 1998 in which the Plaintiff was represented by counsel. On the 28th August, 1998, the Plaintiff filed a notice in court which was undated under which he terminated the services of his counsel. The record does not show when the Plaintiff's new advocate was appointed. It, however, shows that on 4th September, 1999 leave was granted to the Plaintiff to amend his plaint and the Defendant was at liberty to file his amended defence within fourteen days. The suit was later fixed for hearing on 5th June, 2000 and it appears that both counsel had not read their brief and got the court to record another consent order giving the Defendant leave to file his amended defence. This order was superfluous as the Defendant had already been given leave in September 1999. No action was taken for the whole of year 2001 until this application by the Defendant to have the suit dismissed for want of prosecution.

In his replying affidavit, the advocate for the Plaintiff deponed that the Defendant was ordered to amend his defence which to date he has not amended and as such the pleadings are not closed.

The Plaintiff's contention cannot stand as the Defendant had been given fourteen days in which to file his amended defence. It follows that after the amended defence was not filed within the stipulated time, then the Defendant stood by its original defence on the file. It was incumbent upon the Plaintiff to prosecute his case. He took a whole year doing nothing.

This court is not going to condone the laxity of the advocates. The application for dismissal of the suit for want of prosecution is therefore granted as prayed with costs to the Defendant.

Dated this day of2003.

J.V.O. JUMA

JUDGE