



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL CASE NO. 934 OF 1998**

**INDEXCO MARKETTING SERVICES LTD.....PLAINTIFF**

**VERSUS**

**FLATS INVESTMENTS LTD.....DEFENDANT**

**RULING**

This is the defendants application for an order that the suit be dismissed for want of prosecution. It was filed on 28.5.2001. the suit was filed on 23.4.98 The reliefs sought in the plaint are: (a) Damages for unlawful distress and (b) – a permanent injunction to restrain defendant from closing distaining or infringing on the plaintiffs quiet possession of the rented premises LR No. 209/4360/9 Plaintiff pleads in para 4 of the plaintiff that the lease the subject matter of the suit expired on 31.3.98 but was renewed for a further six years and with expire on 31.3.2002.

Plaintiff got a temporary injunction to restrain defendant from detraining closing or interfering with plaintiffs possession on 24.4.98. On 29.4.99 the interlocutory injunction was granted until the determination of the suit.Since then plaintiff did not take any other action other than filing a request for judgment in default of defence filed on 4.6.2001. The Deputy Registrar did not comply with the request and plaintiff counsel did not pursue the matter.

It is clear that the 3 years since the filing of the suit expired on or about 23rd April, 2001. By then plaintiff had not taken any steps to prosecute the suit. The request for judgment was filed after the expiry of the 3 years and after the present application was filed. Plaintiff did not even attempt to file list of documents as required by order X Rule XI A Civil Procedure Rules.Plaintiff had to prosecute the suit before 31.3.2002 when lease expires but plaintiff took no steps to prosecute the suit. The lease is expiring about 2 weeks time from now. The suit will have been overtaken by events after 31/3/2002

I am satisfied in the circumstances of this case that plaintiff went to sleep after obtaining an interlocutory injunction and lost interest in the prosecution of the suit. As lease is expiring in about 2 weeks time, it is futile to allow plaintiff to prosecute- the suit.

Consequently, I allow the application with costs and dismissed suit for want of prosecution as prayed with costs. The interlocutory injunction given on 29.4.99 is discharged

E. M. Githinji

Judge

13.3.2002

Mr. Gachie for Mr. Mbigi present

Mr. Adera for Joshi for plaintiff present

