



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO. 1088 OF 1997**

**HOLY GHOST CHURCH OF EAST AFRICA.....PLAINTIFF  
VERSUS  
DAVID KABIRU ALIA MARIKO KABIRU.....DEFENDANT**

**RULING**

This is the defendant's application for an order that plaintiff's suit be dismissed for want of prosecution under Order XVI Rule 5 Civil Procedure Rules.

I have considered the contents of the replying affidavits and Counsels submissions. On 15.10.98 plaintiffs counsel applied for adjournment of the suit on the ground that plaintiff had left all vital documents. Suit was last listed for hearing on 12.10.99 when it was adjourned generally since then plaintiffs have not taken any steps to prosecute the suit. Defendant has filed its list of documents in accordance with order X Rule 11 A(1) of Civil Procedure Rules. Plaintiff has not complied with that Rule. The letter dated 14/12/2000 annexed to the replying affidavit of Mr. Kameru show that the current officials of the plaintiff do not have documents relating to the dispute. That perhaps explains why plaintiff has not complied with order X Rule II A (1) of Civil Procedure Rules. How does plaintiff intend to proceed in this case?

The same letter further shows that the present officials of plaintiff intend after getting Photostat copies of the documents from plaintiffs "lawyers" to redefine" their goals and objectives of this disputes. That letters does not show commitment to prosecute the suit. Lastly, I note that this dispute arises because defendant allegedly registered a splinter group of the plaintiff church. I do not think that this suit will solve the underlying problem.

It is my view that this suit should not be allowed to remain pending any longer.

As plaintiff has not taken steps since November to prosecute the suit and as plaintiff has not given any good reason for delay and for other reasons stated above I allow the application with costs and dismiss the suit with costs as prayed.

**E. M. Githinji**

**Judge**

**17.7.2001**

**Mr. Kamere present**

**Mr. Kariuki holding brief for Mr Wanjau present**