



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL CASE NO.33 OF 2005**

**RAI PLYWOODS (K) LTD.....PLAINTIFF /APPLICANT**

**VERSES**

**MT ELGON COUNTY COUNCIL.....DEFENDANT/RESPONDENT**

**RULING**

1. By its application dated 26<sup>th</sup> November, 2018 the Applicant prays that the orders of this court dated 31<sup>st</sup> October, 2018 dismissing the entire suit be set aside and that direction be given regarding the hearing of the main suit. The same is supported by the sworn affidavit of **Alfred Nyairo** sworn on the even date.
2. The grounds raised are that the Plaintiff was not served with a notice to show cause why the suit should not be dismissed for want of prosecution and that the same was made pursuant to an error on the face of record.
3. The Respondents vide the grounds of opposition stated that there was no error apparent on the face of record and that the Plaintiff had failed to prosecute the same for over 14 years.
4. I have read the proceedings as well as the submission by the parties and its clear that this matter has taken a very long time to prosecute. The application for example for amending the plaint has not been prosecuted since it was filed on the 10<sup>th</sup> October, 2016 and the same has been due to reluctance on the part of the plaintiff although the Defendant has not equally taken any action.
5. All in all, so as not to drive away the parties from the seat of justice, this court shall allow the application with costs to the Respondent. There is no prejudice to be suffered by the Respondent.
6. The court has equally perused the anticipated amendment to the plaint and takes cognisance of the fact that the same can be determined at the lower court. In the premises this matter is hereby reinstated and transferred to the lower court at Kitale for hearing and final disposal.

**Dated, signed and delivered in open court at Kitale this 11<sup>th</sup> day of June 2019.**

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**H.K CHEMITEI**

**JUDGE**

**11/6/19**

**In the presence of:**

**Kipruto for the Plaintiff/Applicant**

**None Appearance for the Respondent**

**Court Assistant**

**Ruling read in open court.**