

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO 3295 OF 1993

KENYA PROJECTS INVESTMENT LIMITED.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK.....DEFENDANT

AND

KENYA NATIONAL TRADING CORPORATION.....THIRD PARTY

R U L I N G

1. I have perused the court record herein. The Plaintiff's suit was filed on 8th July 1993. The Defendant filed its defence on 24th August 1993 and the Plaintiff filed its reply to defence on 21st October 1993. The Defendant was subsequently granted leave to serve a third-party notice, and it filed its third-party notice dated 7th February 1994 on 8th February 1994, thus bringing the Third-Party, **Kenya National Trading Corporation**, into the suit. An agreed statement of issues as between the Plaintiff and the Defendant dated 4th November 1993 was filed.

2. It appears that neither the Plaintiff nor the Defendant did much to push the case towards hearing. The Third-Party then moved the court by notice of motion dated 20th March 2002 for dismissal of the suit for want of prosecution. That application was allowed on 10th July 2002 and the suit dismissed for want of prosecution. But the suit was reinstated on 5th June 2003 upon application by the Plaintiff. Thereafter not much happened towards hearing of the suit, though the suit came up for hearing on 21st February 2005 when, at the behest of the Plaintiff, it was adjourned generally. Since then the Plaintiff has apparently not taken any steps towards prosecution of its case.

3. The Third-Party has now come to court for the second time to seek dismissal of the Plaintiffs suit for want of prosecution. This is by **notice of motion dated 10th September 2013** which is the subject of this ruling. The application is brought under **Order 17, rule 2(3)** as read with subrule (1) of the **Civil Procedure Rules, 2010** (the **Rules**). The Third-Party being a party in the suit, it is no doubt entitled to bring the application. Despite service upon it the Plaintiff has not filed any response to the application. The Defendant supports the application for dismissal.

4. There cannot be many cases as old as this one in the records of this court. This case is now 21 years old, yet the Plaintiff has not taken any discernible step towards prosecution of the same. Even after the case was once dismissed (and reinstated) over 10 years ago, the Plaintiff was not prompted into action! Even the present application has not moved it.

5. I have no hesitation at all in allowing the present application. It is apparent that the Plaintiff has totally lost interest in this suit. There is no reason why it should be allowed to continue pending.

6. The Plaintiff's suit is hereby dismissed for want of prosecution with costs to both Defendant and

Third-Party. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF OCTOBER 2014

H P G WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2014