

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

Civil Case 529 of 1994

NATIONAL BANK OF KENYA.....PLAINTIFF

VERSUS

JOSEPH NYABANDO OKEMWA.....DEFENDANT

RULING

This case was filed way back in 1994, over 18 years ago. No action has been taken towards its prosecution since November 2005. On 27/4/2012, this court took out a notice to the plaintiff pursuant to Order 17 Rule 2, to show cause why the suit cannot be dismissed for want of prosecution. Lucy Gichuki, advocate for the plaintiff swore an affidavit dated 4/6/2012 opposing the dismissal. She deponed that the suit had been listed for hearing on 26/9/06 but the file went missing and efforts to trace it have been fruitless. Letters from the plaintiff's counsel to the Deputy Registrar of this court are exhibited, (annexure 1). The plaintiff prepared an application for reconstruction of the file in 2010 but it was not filed because the counsel dealing with the matter left the firm. It is counsel's contention that the failure to prosecute the case is not intentional.

I have considered the contents of the counsel's affidavit and it seems for some time, the court file was missing. However, the plaintiff has not been diligent enough because the advocate should have moved the court for reconstruction of the court file. The application for reconstruction that was exhibited was never filed. The court will indulge the plaintiff and direct that the plaintiff do prepare, file and prosecute its application for reconstruction within 60 days and thereafter the matter be fixed for hearing within 90 days, failing which the appeal will automatically stand dismissed.

DATED and DELIVERED this 4th day of October, 2012.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Koech holding brief for Mr. Omingo for the plaintiff

N/A for the respondent

Kennedy – Court Clerk