

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

(MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

CIVIL CASE 123 OF 2006

BERNARD KITUVA NGANGAPLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LTD. 1ST DEFENDANT

MUTUKU MALONZA 2ND DEFENDANT

EZEKIEL MWAKA MUSAU 3RD DEFENDANT

RULING

Application of notice of motion dated 15/12/08 seeking orders that this suit be dismissed for want of prosecution on the ground that the plaintiff has failed to set down the suit for hearing since his injunction application was stood over generally on 9/5/2006.

This application is supported by affidavit of Mr. Kiragu Kimani who has filed a very detailed explanation of the very inordinate delay in prosecuting this suit.

In replying affidavit, the plaintiff has tried to justify his delay. He brings in the dispute of personal nature – threats on his life and those of his family. And that he has reported these threats to police and internal security ministry about this matter and so forth.

I have perused the plaintiff’s explanations and I find no good reason to give him more time, these allegations have no merit. If he is not able to proceed with the prosecution of the case he could withdraw the suit. He must comply with the rules of procedure as set out in the **Civil Procedure Act** and **Rules** thereunder as to the conduct of suits.

I therefore allow the application and grant orders sought. The respondent shall pay the costs of this application.

Orders accordingly.

DATED and **DELIVERED** at Nairobi this 4th day of May 2009.

JOYCE N. KHAMINWA

JUDGE