

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

(MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

CIVIL CASE 359 OF 2004

JOYCE MUKUHI NJENGAPLAINTIFF

VERSUS

EQUITY BUILDING SOCIETY LTD. 1ST DEFENDANT

PATRICK KUNGU KIMATA *t/a*

MARCHET AUCTIONEERS 2ND DEFENDANT

AGNES WANJIRU MUCHAI 3RD DEFENDANT

R U L I N G

Notice of motion dated 2/3/2009 seeking orders to dismiss this suit for want prosecution under the provisions of **Order XVI Rule 5 (d)**.

The grounds are that the last time this matter was in court was on 26/8/08. It is over six months since and the plaintiff has not taken any steps to proceed to set down suit for hearing despite that the court diary for the year 2009 has been open since August 2008.

The application is supported by affidavit of Joseph Gathoga Wairegi which I have read. The replying affidavit of Simon Theuri Wanjohi which I have also read, it is admitted that on 26/8/2008 the ruling was delivered by court. It is also admitted that the court diary was opened in November 2008. It is also stated that the court diary was closed on 4/2/2009. It is also stated that the discovery is not completed. It is clear as admitted the plaintiff has had more than 6 months with which to ensure discovery is completed and also to ensure that the court registry did allocate a hearing date of this suit within that time in the circumstances.

I do not find the reasons for delay satisfactory. I allow the application and grant orders sought with costs.

It is so ordered.

DATED and DELIVERED at Nairobi this 7th day of May 2009.

JOYCE N. KHAMINWA

JUDGE