



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**Civil Case 42 of 2006**

**NATIONAL OIL CORPORATION OF KENYA LIMITED ... PLAINTIFF**

**VERSUS**

**ROY SPARES & HAULIERS LTD. ....DEFENDANT**

**R U L I N G**

Notice of motion dated 16/3/2009 seeks to review orders made on 18/11/08:-

*“That the court be pleased to review its orders of 18/11/2008 and/or dismiss this suit with costs”.*

On the grounds that the plaintiff has failed to prosecute and finalize within 120 days after being ordered by this court to do so. The respondent has failed to pay costs ordered by court within the time allowed. There is error on the application or other sufficient reasons.

On 18/11/2008, the court ordered the plaintiff’s suit be placed on hearing list within 45 days of the ruling but it is now more than 120 days and the suit has not been returned to the hearing list.

That application dated 5/6/2007 was not considered and the court did not consider the issue of failure to supply particulars or address the issue, this was an error or sufficient issue to dismiss the suit and furthermore, the court misapprehended the defendant’s arguments on the verifying affidavit which was fatally defective and ought to be struck out and the plaint ought to be struck out too.

Misunderstanding of the court is not sufficient reason to review an order. An examination of the supporting affidavit it is to be noted, the issue of non compliance with the court order “to place the suit on the hearing list within 45 days” is a breach of court order and this is a ground that warrant final dismissal of suit.

The issue of failure to comply with court order as to costs is now overtaken by events. That order has been set aside. On the issue of non compliance with order to supply particulars, let it be noted that provision of particulars are contained in **Order VI Rule 8**.

On the issue of court misapprehending the defendant’s argument on the verifying affidavit that is an issue for appeal and not review. No review is based on court’s misunderstanding of the law. It is true that now 120 days has passed before the plaintiff has returned the case to the hearing list, and that is reason to warrant dismissal of the suit. The error in failing to address all issues is not an error to warrant a review. Also a misapprehension of law is a ground of appeal.

In the circumstances, it is my view that this matter should be dismissed for failure by plaintiff to comply with court order failing to place the suit in the hearing list within the 45 days as ordered.

I therefore strike off the suit and all proceedings therein with all costs to the defendant.

Orders accordingly.

**DATED and DELIVERED** at Nairobi this 3<sup>rd</sup> day of June 2009.

**JOYCE N. KHAMINWA**

**JUDGE**