



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**MILIMANI COMMERCIAL AND ADMIRALTY DIVISION**

**Civil Case 64 of 2002**

**JAMES KIMATHI (t/a K & M ARCHITECTS) ..... 1<sup>ST</sup> PLAINTIFF**

**M.A. OORO & OTHERS ..... 2<sup>ND</sup> PLAINTIFF**

**KISA & PARTNERS CONSULTING**

**ENGINEERS LTD. .... 3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**KENYA COMMERCIAL BANK LTD. .... DEFENDANT**

**RULING**

Notice of Motion dated 14/5/09 is brought under **Order XVI Rule 5 (d), Order L Rule 1 and 3, Section 3A Civil Procedure Act, Cap.21** seeking the dismissal of suit by 3<sup>rd</sup> plaintiff for want of prosecution, on the ground that the 3<sup>rd</sup> plaintiff has failed to set down the suit for hearing since 24/4/2007. And there is great delay causing the defendant prejudice.

The 1<sup>st</sup> and 2<sup>nd</sup> plaintiff have withdrawn their suits against the defendant. The 3<sup>rd</sup> plaintiff claims special damages for Kshs.6,092,399/=. The 3<sup>rd</sup> plaintiff has sworn an affidavit through the deponent Frashia M. Githinji, sworn on 2/6/2009 which opposes the application for dismissal in further affidavit by the applicant. Exhibited are letters from 14/12/05 to 26/2/2008 on the subject of arbitration. No

instructions have been received yet.

I have noted the authorities relied upon by the parties. However, my view is that there has been inordinate delay and there is no reasonable excuse advanced for such delay. I therefore come to the conclusion that the 3<sup>rd</sup> plaintiff has lost interest in the suit and I allow the application and grant orders as prayed with costs.

Orders accordingly.

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

**JOYCE N. KHAMINWA**

**JUDGE**