



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**CORAM: GICHERU, SHAH & OWUOR, J.J.A**  
**CIVIL APPEAL NO. 3 OF 2000**  
**BETWEEN**  
**INTEREACT LIMITED**  
**SUDHIR J. PATEL.....APPELLANTS**

**AND**

**DINERS CLUB AFRICA LIMITED.....RESPONDENT**

**(Appeal from the order of the High Court of Kenya at Nairobi (Mr. Justice Ole Keiwua) dated 18th November, 1999**

**in**

**H.C.C.C. NO. 2540 OF 1994)**

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**JUDGMENT OF THE COURT**

This appeal arises out of a refusal by the superior court (ole Keiwua, J, as he then was) to dismiss the suit in the court for want of prosecution. The undisputed fact is that the respondent (plaintiff in the superior court) took no steps whatsoever to prosecute the suit filed by it. At the time the application to dismiss the suit came up for hearing the respondent's counsel stated that he was then ready to prosecute the suit. Order 16 rule 6 of the Civil Procedure Rules empowers the superior court to dismiss a suit for want of prosecution if no steps are taken to prosecute the same within three years of the close of pleadings. There is also inherent power in the court to dismiss the suit if the delay in prosecuting the suit is inordinate - See Mukisa Biscuit Company vs. West End Distributors [1969] E.A. 696.

With respect the learned Judge in exercising his discretion not to dismiss the suit erred in applying a wrong principle. He said that as the respondent was remorseful he would allow him to prosecute the suit.

The upshot of this is that this appeal is allowed with costs and H.C.C.C. No. 2640 of 1994 is ordered dismissed with costs.

**Dated and delivered at Nairobi this 5th day of June, 2000.**

**J.E. GICHERU**

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**JUDGE OF APPEAL**

**A.B. SHAH**

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**JUDGE OF APPEAL**

**E. OWUOR**

.....

**JUDGE OF APPEAL**

**I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR.**