



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**MISC CIVIL APPLICATION NO. 11 OF 2016**

**JAMES KOSGEY ..... APPLICANT**

***VERSUS***

**MAUREEN WACHERA MACHARIA .... 1<sup>ST</sup> RESPONDENT**

**SABINA CHEPKURUI BIWOTT ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. **JAMES KOSGEY** filed a Notice of Motion dated 9<sup>th</sup> September 2016 seeking for an order from this court to transfer the file of Karatina Chief Magistrate Court Civil Case No. 83 of 2010 to Nanyuki Chief Magistrate Court for trial. This matter was first filed before Nyeri High Court. On 19<sup>th</sup> September 2016 the Nyeri High Court transferred this file to Nanyuki High Court. Kosgey other than fixing a hearing date of that Notice of Motion on 6<sup>th</sup> October 2016, on which date he failed to attend court, he has taken no further action in this matter. As a consequence the court served upon Kosgey a notice to show cause why this matter should not be dismissed. The date for that Notice to Show Cause was 18<sup>th</sup> January 2017. Kosgey did not attend court on that neither did he attend court on 30<sup>th</sup> March the subsequent date for hearing of his notice to show cause.

2. On 25<sup>th</sup> May 2017 when the court set the hearing of notice to show cause Kosgey attended court and informed the court that he wished for the case in Karatina to be transferred to Nanyuki. Kosgey did not show cause why the matter should not be dismissed for want of prosecution.

3. In my view Kosgey has lost interest in this matter. He has delayed its conclusion contrary to Article 159(2) which provides that justice shall not be delayed. Further the status of the case before Karatina was not disclosed by Kosgey. It may very well be part heard before that court and the interest of justice then would not be served by ordering its transfer.

4. On the whole there is no reason shown why this matter should not be dismissed. The order of the court is that this matter is dismissed for want of prosecution. There shall be no orders as to costs since there is no evidence the respondent was ever served.

Orders accordingly.

**DATED AND DELIVERED AT NANYUKI THIS 22<sup>ND</sup> DAY OF JUNE 2017.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Applicant: James Kosgey .....

For Applicant .....

For Respondents: .....

**COURT**

Ruling on sentence delivered in open court.

**MARY KASANGO**

**JUDGE**