



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL SUIT NO 15 OF 2011**

RUKIA HUSSEIN ALI.....1ST PLAINTIFF/APPLICANT

FARAH HUKA TADICHI.....2ND PLAINTIFF/APPLICANT

(Suing as the Legal representatives of the Estate of HUKA TADICAH DUBA)

VERSUS

BARNI DAWAF.....DEFENDANT/RESPONDENT

**R U L I N G**

1. This application is dated 24th October, 2016 and seeks orders:-

(1) ***THAT the defendant's application dated 4th December, 2013 be dismissed for want of prosecution and for non compliance with the Court's direction.***

(2) ***THAT the costs of this application be provided for.***

2. The application is supported by the affidavit of the plaintiffs RUKIA HUSSEIN ALI and FARAH HUKA TADICHA.

3. The application has the following grounds:-

(a) ***THAT the defendant was served with summons to appear and other court process but refused to appear.***

(b) ***THAT the court entered Interlocutory Judgment.***

(c) ***THAT the Defendant made an application for setting aside the Interlocutory Judgment and for an injunction against the plaintiffs. The application is dated 4th December, 2013.***

(d) ***THAT the parties appeared in court on 18th December, 2013 and agreed that the application be disposed off through written sub-missions.***

(e) ***THAT the defendant was given 21 days but has refused to put in written sub-missions.***

(f) ***THAT the defendant has also failed to prosecute its application for now 22 months which is more than one year.***

(g) ***THAT the defendant is delaying the hearing of the suit with his application.***

***(h) THAT the application should be dismissed to enable the Plaintiff proceed.***

4. The matter came up in Court on 28/11/2016. Miss Mbaikiata, the plaintiffs' Advocate, told the Court that the defendant's advocates had been properly served with today's date but were not in Court. She told the Court that the plaintiffs had filed an affidavit of service showing that the firm of Khaminwa and Khaminwa had received the apposite Mention Notice.

5. Miss Mbaikiata urged the Court to dismiss the defendant's application dated 4th December, 2013 saying that their non-appearance in Court was an indication that the defendant was not interested in prosecuting the said application.

6. I do confirm that the defendant had been properly served with the Notice of Mention concerning today's date for directions.

7. I do note that the parties were in Court on 18/12/2016 when they agreed to canvass the application dated 4th December, 2013 by way of Written Submissions. The Defendant was granted 21 days to do so but failed to put in the required Written Submissions.

8. I do note that failure by the Defendant, as the applicant, to file Written Submissions within the time frame given by this Court, has derailed the hearing and determination of this application as the Respondents, the Plaintiffs, could not file their Submissions without knowing what issues they were supposed to respond to.

9. I find that this application is meritorious.

10. In the circumstances, I dismiss the defendant's application dated 4th December, 2013.

11. Costs shall be in the cause.

12. It is so ordered.

**DELIVERED IN OPEN COURT AT MERU THIS 28TH DAY OF NOVEMBER, 2016.**

CA: Daniel

M/S Mbaikiata for the Plaintiffs

**P.M. NJOROGE**

**JUDGE**