



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**HCC NO. 140 OF 2008**

**MOSES MUNENE.....PLAINTIFF**

**VERSUS**

**PATRICK GIKUNDA KIMATHI.....DEFENDANT**

**R U L I N G**

This application is dated 18th September, 2013 and seeks orders:

1. ***THAT this application be certified as urgent and heard on priority basis.***
2. ***THAT this suit be dismissed with costs for want of prosecution.***
3. ***THAT the costs of this application be provided for.***

The application was heard interpartes on 1.4.2014. the defendant/applicant submitted that the last time anything to do with the suit was in court was on 10.11.2010. As nothing had been done by the plaintiff to set down the case for hearing, he submitted that the suit should be dismissed in accordance with the Civil Procedure Rules. It was conceded for the defendant that the plaintiff had largely complied with the Civil Procedure Rules though compliance documents were filed belatedly on 18.9.2012. The defendant denied that the plaintiff had written a Notice dated 7.1.2013 inviting the parties to fix a hearing date at the Registry.

The plaintiff submitted that he had always been diligent as the court records would show that the suit was fixed for hearing several times but for one reason or another it could not be heard. It was submitted that at no time had the plaintiff prayed for an adjournment. The plaintiff also said that the defendant, through his lawyers, Maitai Rimita & Co., Advocates, had by a letter dated 15.2.2013 addressed to this court's Deputy Registrar acknowledged that there was a problem getting hearing dates. It was stated that instead of waiting for a reply from the Deputy Registrar, the defendant filed this application. It was also pointed out that between the promulgation of the Constitution and October, 2012, the ELC was not operational. The plaintiff urged the court to direct full compliance with the Civil Procedure Rules, dismiss this application and allow the parties to be fully heard so that the suit can be determined on its merits.

Order 17 rule 2 states that in any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction the court may dismiss the suit. Order 17 rule 3 says that any party to the suit may apply for its dismissal as provided by sub-rule 1. this provision is the basis of the present application.

The plaintiff filed some compliance documents on 18.9.2012. This application is dated 18.9.2013 about one year and one day after the plaintiff had filed compliance documents. The parties are not in agreement that the plaintiff had invited the defendant for a meeting at the court's registry to fix a hearing date vide a

letter dated 7.1.2013. The parties are, however, in agreement that the defendant's lawyers had written a letter dated 15.2.2013 to the Deputy Registrar, seeking intervention regarding a hearing date. I deem this to be a step taken by one of the parties to have the hearing of this suit expedited. The application is dated 18th September, 2013 less than one year since either of the parties had taken any step.

I note that the parties have gone along way towards complying with Order 11 of the Civil Procedure Rules. I opine that this suit should be heard expeditiously. In the circumstances, after giving due consideration to the submissions, averments and the circumstances of this application and suit, I direct as follows:

***1. This application is dismissed with costs to be in the cause.***

***2. The parties should comply with Order 11, CPR, within 30 days from the date of this ruling's delivery.***

***3, The plaintiff should set down this case for hearing at the registry within 60 days from the date this ruling is delivered failing which this court may dismiss this suit for non-compliance with the directions issued herein.***

*It is so ordered.*

***Delivered in open Court at Meru this 14th day of January, 2015 in the presence of : CC: Daniel/Lilian***

Miss Gituma for Defendant/Applicant

Mutuma h/b E.G. Mwangi for Plaintiff/Respondent

**P. M. NJOROGE**

**JUDGE**