



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 862 OF 1996**

**MAGDALINA NYARUAI MUROGO.....PLAINTIFF**

**VERSUS**

**MARGARET WANJIRU MURUI**

**KENYA COMMERCIAL BANK LIMITED.....DEFENDANTS**

**RULING**

1. The 2<sup>nd</sup> Defendant herein sought the dismissal of this suit by a Notice of Motion dated 29<sup>th</sup> September, 2014. It is alleged that the Plaintiff has since 4<sup>th</sup> June, 2004 when the matter was last in court not taken to prosecute occasioning miscarriage of justice and prejudice to the 2<sup>nd</sup> Defendant. It was contended the 2<sup>nd</sup> Defendant's witnesses, if any may be found will find difficulty in recalling their testimonies due to prolonged lapse of time.

2. Despite service of this application, no response was put forth on behalf of the Plaintiff. At the hearing of the application, learned counsel for the 2<sup>nd</sup> Defendant Mr. Litoro relied on the grounds on the face of the application.

3. I have taken due consideration of the deposition by Counsel for the 2<sup>nd</sup> Defendant and read the court record. This suit was filed way back on 4<sup>th</sup> April, 1996. True to the 2<sup>nd</sup> Defendant's words, the last activity in court in this matter before the filing of this application took place in the year 2004. The Plaintiff herein despite being served with this application has not bothered to respond thereto.

4. It is worth noting that the duty is majorly on the Plaintiff to ensure expeditious prosecution of a suit once it is filed. I am fortified by the holding of Lord Denning in **Fitzpatrick v. Batger & Co. Ltd [1967] 2 ALL ER 657** citing his decision in **Reggentine v. Beecholme Bakeries Ltd [1967] 111 Sol. Jo. 216** where he said as follows:-

***“It is the duty of the Plaintiff’s advisers to get on with the case. Public policy demands that the business of the Courts should be conducted with expedition ... the delay is far beyond anything we can excuse. This action has gone to sleep for nearly two years. It should now be dismissed for want of prosecution.”***

5. For the above reasons I make orders that this suit is hereby dismissed with costs to both Defendants for want of prosecution. Order accordingly.

Dated, Signed and Delivered in open court this 27<sup>th</sup> day of March, 2015.

J. K. SERGON

**JUDGE**

In the presence of:

.....for the Plaintiff.

.....for the 1<sup>st</sup> Defendant.

.....for the 2<sup>nd</sup> Defendant.