



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO. 94 OF 2008

BERNARD MPIUKI GATUMO.....1ST PLAINTIFF
LAWRENCE KAMUNDI GICHUNGE.....2ND PLAINTIFF
VERSUS
CATHERINE M. KAMUNDI.....1ST DEFENDANT
DOMINIC KIRIMI GICHUNGE.....2ND DEFENDANT

R U L I N G

This application by the defendants is dated 26th January, 2015 and seeks orders:

1. **THAT** this Honourable court be pleased to dismiss this suit for want of prosecution.
2. **THAT** the costs of this application be provided for.

It is supported by the affidavit of the 1st Defendant and also by the following grounds:

1. **THAT** the Plaintiffs or their Advocates have not taken any step towards the prosecution of this suit for close to five years now.
2. **THAT** the Plaintiffs have failed to expedite the prosecution of this suit.
3. **THAT** the plaintiffs have lost interest in their claim and are not desirous to have the matter determined on its merits.
4. **THAT** in furtherance of the overriding objective all claims be disposed off expeditiously as dismissal would not be unwarranted or draconian in the circumstances of this suit as the plaintiffs have been blatantly indolent.
5. **THAT** the delay in vindication of the defendants is a clear case of justice delayed is justice ultimately denied.
6. **THAT** this Honourable Court has the power to grant the orders prayed for.

The application was heard on 13.4.2015 when Mr. Murithi for the defendants told the court that the suit was filed in 2008 and had never been brought before a judge. He prayed that the suit be dismissed for want of prosecution.

Order 17 Rule 3 provides that any party to a suit may apply for dismissal of a suit if no application has been made or step taken by either party for one year.

In this matter, no step has been taken since 17.11.2009, over 5 years ago. I, therefore, find that this suit warrants to be dismissed for want of prosecution. In the circumstances, I dismiss the suit. Costs are awarded to the defendants.

It is so ordered.

Dated and delivered in Open Court at Meru this 13th day of April, 2015 in the presence of:

Cc. Daniel

Mutunga h/b Murithi for defendant

P. M. NJOROGE

JUDGE