

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 1411 OF 2000

PAUL KIMANI GITHAIGA

(As administrator of the estate of

Evans Githaiga Githaiya, Deceased).....PLAINTIFF

V E R S U S

1. KENYATTA NATIONAL HOSPITAL

2. DR J C MWANGI.....DEFENDANTS

R U L I N G

1. This is an application by the 2nd Defendant (**notice of motion dated 23rd September 2013**) for dismissal of the Plaintiff's suit for want of prosecution. The 1st Defendant supports the application.
2. Though duly served, the Plaintiff did not file any response to the application.
3. I have read the supporting affidavit sworn by the 2nd Defendant's advocate, **Clare Mwangi**. I have also perused the court record. Finally, I have considered the submissions of the learned counsel for the 2nd Defendant.
4. The court record reveals that amended plaint was filed on 12th March 2001. The 1st Defendant entered appearance and filed defence on 30th May 2001. Interlocutory judgment in default of appearance was entered against the 2nd Defendant, but the same was subsequently set aside upon the ground that the 2nd Defendant had never been served with summons to enter appearance. He subsequently filed defence on 20th July 2010 and served it upon the Plaintiff the following day. Since that time the Plaintiff has not taken any steps towards prosecution of his suit.
5. The Plaintiff has not offered any explanation for this inordinate delay as he did not bother to file any grounds of opposition or replying affidavit. It appears that he has lost interest in the suit.
6. In the circumstances the Plaintiff's suit against both Defendants is hereby dismissed with costs for want of prosecution. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF MARCH 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 28TH DAY OF MARCH 2014