



**REPUBLIC OF KENYA**  
**INTHE HIGH COURT OF KENYA AT MERU**  
**CIVIL SUIT NO. 73 OF 2010**

FRANCIS MBAE NDEREBA.....PLAITIFF

VERSUS

STEPHEN MURITHI MBIJIWE.....1ST DEFENDANT

FRANCIS KIRIMI MBIJIWE.....2ND DEFENDANT

JULIUS KIAMBI MBIJIWE.....3RD DEFENDANT

KIMATHI MBIJIWE.....4TH DEFENDANT

MWITI MBIJIWE.....5TH DEFENDANT

KINYUA MBIJIWE.....6TH DEFENDANT

**RULING**

This matter was heard on 21.10.2014 when parties were to show cause why the suit should not be dismissed for want of prosecution in terms of the requirements of order 17 of the Civil Procedure Rules.

Notice had properly been issued to the parties.

Miss Thibaru for the plaintiff stated that the notice to show cause had been improperly issued as before the notice was issued on 21st October, 2014, the plaintiff had gone to the registry on 28.4.2014 and obtained a date for the suit to be mentioned on 28.7.2014. According to her, a step had been taken less than one year before the notice was issued. I do not agree with her argument. The notice was for showing cause why the suit should not be dismissed as the parties had not taken any step, as envisaged by Order 17, CPR, between 16.11.2011 and 8.14.2014 when a mention date was obtained. This constituted a period of almost two and half years.

Mr. Kariuki holding brief for Miss E. Mwangi, for the defendants conceded that no step had been taken for over 2 years. He also pointed out that the plaintiff has not shown any cause regarding why he had not taken a hearing date. He, however, told the Court that the defendants had filed a defence and a counter claim and wished to have their part of the story heard. He pleaded for indulgence.

Having considered all the factors in this mater, I have reluctantly refused to exercise my discretion to have the suit dismissed for want of prosecution. I, however, issue the following directions:

1. ***The parties to fully comply with order 11 CPR within 60 days from the date for this ruling, failing which the Court may consider dismissing the suit for want of prosecution.***

2. *After completion of compliance, the Plaintiff to set down the suit for hearing within 30 days.*

3. *Costs shall be in the cause.*

*Delivered in Open Court at Meru this 24th day of October, 2014 in the presence of:*

Cc. Daniel

Miss Thibaru for plaintiff

**P. M. NJOROGE**

**JUDGE**