



**REPUBLIC OF KENYA**

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

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 34 OF 1998**

**MENGO FARM LIMITED .....PLAINTIFF/RESPONDENT**

**VERSUS**

**EUNAH WAMUYU KARIUKI ..... DEFENDANT/APPLICANT**

**R U L I N G**

1. On 21<sup>st</sup> October 2014 the application dated 27<sup>th</sup> January 2012 and filed in court on 30<sup>th</sup> January 2012 was due for hearing. Mr. Wananda for the Applicant was not in court, and his brief was held by Mr. Ongegu who sought an adjournment on the grounds that Mr. Wananda needed to file a further affidavit to his application.
2. Mr. C. N. Kihara for the Respondent submitted that the application had taken too long to prosecute and was fostering the Defendants right to justice and should be dismissed if Mr. Wananda was not ready to proceed with it. Mr. Kihara's submissions were premised on what had transpired on 16<sup>th</sup> June 2014. On that day, when the same application was due for hearing a Mr. Lugonzo held Mr. Wananda's brief and sought an adjournment of the matter on the grounds that Mr. Wananda was unwell and was hospitalised. Mr. Kihara for the Respondent did not object to the application for adjournment. It is the second adjournment sought on 21<sup>st</sup> October 2014 that has provoked Mr. Kihara to seek the dismissal of the application.
3. I have considered Mr. Kihara's application to dismiss the said application. Mr. Wananda's application dated 27<sup>th</sup> January 2012 seeks to commit the Defendant herein in civil jail for contempt of orders issued on 6<sup>th</sup> August 1998 and on 16<sup>th</sup> November 1999. An application for contempt is normally an urgent application resorted to, to restore the dignity of the court in situations where it is alleged that a party was bringing the dignity of the court into disrepute by disobeying orders of the court. Such an application is normally an interim application which has nothing to do with the substantive issues in dispute between the parties. It is an application which must be dispensed with as soon as possible to restore the dignity of the court to normalcy as soon as possible. It is not the kind of application which would be allowed to gather dust. The current application was filed almost three years ago. There does not appear to be an interest on the part of the Applicant to prosecute the same. I agree that there is no proper reasons given for seeking adjournment on 21<sup>st</sup> October 2014 and I allow Mr. Kihara's application to have the same dismissed for want of prosecution.

4. I must however note that I have made no determination on the merit of the application and the Applicant is not precluded from bringing the same application based on the same grounds in future.
5. In the upshot I make the following orders:-
  - a. *The application dated 27<sup>th</sup> January 2012 and filed in court on 30<sup>th</sup> January 2012 is hereby dismissed for want of prosecution.*
  - b. *The Applicant is at liberty to bring up the same application based on same facts in future if need be.*
  - c. *Costs herein assessed at Kshs.10,000/= shall be paid by the Applicant.*

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI THIS 18TH DAY OF NOVEMBER 2014**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

Oenga holding brief for Wananda for the Plaintiff/Respondent

M/s Kibera for the for Defendant/Applicant

Teresia – Court Clerk