



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL SUIT NO. 187 OF 2009

HOMEWARD AGENCIES LIMITED PLAINTIFF/APPLICANT

VERSUS

KIMANI WANYOIKE 1ST DEFENDANT/RESPONDENT

PETER MUGEKA MAINA 2ND DEFENDANT/RESPONDENT

BONIFACE I. MUTURI (SUED AS OFFICIALS OF KENYA

**AFRICAN NATIONAL TRADERS AND FARMERS UNION) 3RD
DEFENDANT/RESPONDENT**

R U L I N G

1. The matter is for ruling of Motion dated 24th August 2012 which prays for orders that the suit be dismissed for want of prosecution.
2. The application is based on the 4 grounds on the face of the Motion. The Motion is based on the provisions of **Order 17 Rule 2 (3) Civil Procedure Rules** and **Section 3 of Civil Procedure Act**.
3. The application is supported by the affidavit of **Leonard Nzioka Ngolya** sworn on the 24th August 2012. The application was served upon the Respondents Advocate but no reply has ever been filed.
4. The matter came for hearing on the 1st October 2014 but despite service, the Respondent and his advocate were absent.
5. The Applicant's case is that, the suit herein was filed on 15th June 2009 and was last in court on the 14th December 2009. Since the aforesaid date, no step has been taken for a period of 3 years upto the time the Motion herein was filed.
6. **Order 17 Rule 2 (3)** is to the effect that in any suit where no application or step taken by either party for one year; **Subsection (3)**; Any party to a suit may apply for dismissal.
7. The record shows that the matter was in court on 6th October 2009 when the ruling was delivered and a hearing date fixed on 23rd June 2010.

Since that date 6th October 2009, no other date was fixed nor did the Plaintiff take any other action with a view of fixing

the matter for hearing.

8. The Plaintiff seems to have lost interest with the matter and that is why even the application for dismissal of the suit herein is unchallenged.

9. The court notes that the matter was filed together with an application for injunction under certificate of urgency which by a ruling of 14th December 2009 were confirmed.
10. This seems to have catapulted the Plaintiff into a comfort zone and forgot to take any other action to his suit.
11. This court finds that the application has merit and makes the following orders:-
 1. The Motion dated 24th August 2012 is allowed together with costs in the suit and the Motion.
 2. The injunction orders confirmed on 14th December 2009 be and are hereby discharged.

DATED, SIGNED and DELIVERED at MACHAKOS this 14TH day of NOVEMBER, 2014.

CHARLES KARIUKI

JUDGE