

REPUBLIC OF KENYA

High Court at Nyeri

Civil Case 26 of 2005

JULIA WANJIRU & 8 OTHERSPLAINTIFFS

Versus

KARATINA MUNICIPAL COUNCILDEFENDANT

RULING

1. The application is dated 2nd April 2012 under order 17 rule 2(3) of the Civil Procedure Rules in which the applicant seeks an order that the suit be dismissed with cost for want of prosecution.
2. It is supported by the affidavit of Charles Wahome Gikonyo advocate for the applicant in which he deponed that more than three years have since passed since the case was last set down for hearing and that the respondent /plaintiff has not been keen to prosecute the case.
3. The application is opposed by the Respondent through a replying affidavit by one Lawrence Karumba Irungu sworn on 19th November 2012 in which the said deponed that the 1st respondent died on 3rd October 2009 and that they were advised to take out letters of administration to be in a position to have her substituted.
4. That he got temporary letters of administration on 3rd August, 2011 but were under the impression that matters of substitution would only go on after the final grant which was given on 20th January 2012 but got a signed copy on 16th November 2012.
5. The test applied by the courts in an application for dismissal for want of prosecution is whether the delay is prolonged and in excusable and if it is whether justice can be done despite the delay. Thus even if the delay is prolonged if court is satisfied with the plaintiff's excuse for delay and that justice can still be done to parties, the action will not be dismissed but it will be ordered that it be set down for hearing at the earliest available time. It is a matter in the discretion of court Hon. Justice Chesoni in IVITA V KYUMBU(1984)KLR 440.
6. I have looked at the affidavit by the respondent and guided by the above authority I am satisfied with the explanation given for the delay by the respondent.
7. I therefore order that the plaintiffs/respondent fix the main suit down for hearing within the next 30 days from the date herein failure to which the suit shall stand dismissed with costs to the defendant/ applicant.

Dated and delivered at Nyeri this 7th day of February 2013.

**J. WAKIAGA
JUDGE**

Ruling read in court in the presence of Mr. Wachira for Wahome in the absence of Mr. Ndirangu.

**J. WAKIAGA
JUDGE**