



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL CASE NUMBER 713 OF 1996**

**JAMES NJOROGE KARUGA..... PLAINTIFF/RESPONDENT**

**V E R S U S**

**HANNAH NJOKI.....DEFENDANT/APPLICANT**

**RULING**

Coram: Hon. Mwera J

Nyangau for the Plaintiff/Respondent

Thiga for Defendant/Applicant

Elisha Court Clerk

By the application dated 20.9.11 the defendant seeks orders under Order 17 rule 2(3), Order 51 rule 1 of Civil Procedure Rules and Section 3A Civil Procedure Act:

i) that the suit herein be dismissed for want of prosecution.

That the plaintiff is not interested in the matter anymore because he has not taken any step to have it disposed of expeditiously. Having the case around, works injustice to the applicant.

It was stated in the supporting affidavit that this suit was filed on 21.3.96. Kubo J heard it on 13.7.05. There had been no further proceedings to the end. It was last in court on 26.4.10 when the defendant made a successful application to have the file reconstructed. So if the matter has been pending for more than 15 years, the plaintiff must have lost interest in it. It should be dismissed.

The file does not seem to yield any papers in opposition but both sides submitted. Giving the background of the claim, the court was told that all arose from a boundary dispute between the plaintiff and the defendant who bought adjacent portions of land known as NYANDARUA/KINANGOP/599 from the deceased Peter Kahura. While the plaintiff sued to have the whole parcel of land, the defendant maintains that she bought and paid for her portion. Both parties occupy the land. If the plaintiff has a claim indeed it is his primary duty to set the suit down for hearing. He has not done so and no cogent reason has been given for that (see the case of **Alice Mumbi Ng'ang'a Vs Danson Chege Ng'ang'a & Anr** [2006] eKLR. Keeping the status quo puts the defendant in mental stress.

The plaintiff's stand was that he filed grounds of opposition together with a replying affidavit

herein. That Kubo J almost came to the end of the trial herein but the file went missing. It was reconstructed on the defendant/applicant's application but she did not avail some important pleadings – to date. Exhibits tendered in evidence at the early hearing, cannot be found in the court registry, though the registry has not informed the parties whether they are lost or not. Then the plaintiff went into the operations of CPR 2010 which hardly sounded relevant in these proceedings.

It looks like all will be going in circles over this matter particularly on account of missing exhibits and/or that Kubo J partly heard the matter.

What the court deems prudent for the parties to do here is put together the principal pleadings – the plaint and the defence. Each side must have its set. Each side to produce certified copies of any documents they wish to rely on. If originals were tendered before Kubo J quite likely copies remained with the parties. They should exchange witness statements and sets of issues. The cause will be mentioned in 30 days from today for directions on hearing *de novo*. That way all will get out of this saga and proceed somewhere.

Each side to bear its own costs.

Delivered on 19.01.2012.

**J. W. MWERA**

**JUDGE**