



**REPUBLIC OF KENYA**

**High Court at Machakos**

**Civil Case 95 of 2009**

**PATRICK MUTHENGI MALUKI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**PETER K. WATUTA.....DEFENDANT/APPLICANT**

**R U L I N G**

This is a **Notice of Motion** dated 25 May 2012 filed by the defendant **Peter K. Watuta**. It is an application requesting that the suit herein, filed in 2009 be dismissed for want of prosecution. The application was filed under **Order 17 Rule 2 (1) (3) and Order 51 rule 1** of the **Civil Procedure Rules 2010**.

Though the application which had a hearing date for 18<sup>th</sup> July 2012 was served on **M/s Lawrence Mwangi & Company Advocates** for the plaintiff on 28/6/2012, they marked their receipt of the application to be under protest without indicating the reason for the protest. They also did not attend court, nor did they file a response to the application. At the back of the hearing notice the said advocates for the plaintiff endorsed that the service be effected on the plaintiff, while they had not actually not withdrawn from acting for the plaintiff.

Unfortunately, as the application is not opposed, the plaintiff will have to lose this case. No action has been taken by the plaintiff or his advocate, since defence was filed on 19<sup>th</sup> June 2009. I will therefore dismiss the suit for want of prosecution. However, the advocate **Lawrence Mwangi**, who filed the plaint and is still on record, will pay the costs.

Consequently, I allow the application. The suit is hereby dismissed for want of prosecution. The plaintiff's advocate **Lawrence Mwangi** will personally pay the costs of the defendant.

Dated and delivered this **16<sup>th</sup>** day of **November**, 2012.

**George Dulu**

**Judge**

**In the presence of:**

Mr J Makau holding brief for Mwalimu for the Defendant

Mutinda – Court clerk.