



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL CASE NO. 17 OF 2004

JANE MUTHONI KINYUA & OTHERS.....

.....PLAINTIFFS

VERSUS

RUKURIRI TEA FACTORY.....

..... DEFENDANT

RULING

On 24th June 2008, Njeru, Nyaga & Co. Advocates who had been acting for the plaintiff in this matter, was granted leave to withdraw from acting for the plaintiff for reasons inter alia, that the plaintiff had neglected to issue sufficient instructions, and that there was a complete breakdown of communication between the plaintiffs and their advocate. About a year later on 15th June 2009, the Defendant moved the court under Order XVI Rule 5(d) of the Civil Procedure Rules seeking to have the plaintiff's suit dismissed for want of prosecution. By then no action had been taken by the plaintiff from the time their counsel withdrew from the suit.

The plaintiff blames their former counsel for failing to update them on the position of the suit. The plaintiff claims that they have now engaged another counsel and are therefore willing to prosecute the suit.

I have carefully considered the application. It is evident that the plaintiffs have not taken appropriate action in the prosecution of the suit as no action has been taken for about 1 year. The plaintiffs cannot entirely shift blame by passing the buck to their counsel. It was in the plaintiffs' interest to follow their claim and not just to sit back and await information from their counsel. Notwithstanding the above, the plaintiffs appear to have now woken up and have exhibited keen interest in the prosecution of the suit. I would therefore give the plaintiffs an opportunity to do so. However in order to ensure that the plaintiffs do not go to sleep again, I do hereby order that the plaintiffs shall finalize all pretrial process and have the suit listed down for hearing within 90 days from the date hereof.

The plaintiff shall further pay costs of the application to the Defendant.
Orders Accordingly.

**H.M. OKWENGU
JUDGE**

Delivered, dated and signed at Embu this 24th day of January 2011.

In presence of:-Gachuhi holding brief for Defendant/Applicant. Ms. Mucheru holding brief for Nwiga for the Plaintiff.