REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL CASE NO. 1 OF 2009

HEZEKIAH NJOKA……..……...…….. PLAINTIFF

VERSUS

JOSEPH MURIUKI MURIITHI….…….....…….. DEFENDANT

R U L I N G

This is the Applicant/Defendant's Notice of Motion dated 1st October 2010 under Order 16 rule 5 (Old Civil Procedure Rules) for dismissal of the Plaintiff's suit for Want of Prosecution. In his grounds and supporting affidavit he explains that this suit was filed in February 2009. And since the filing of the Defence the Plaintiff has never taken steps to set down the suit for hearing. To him this is inordinate delay and the suit ought to be dismissed.

In his Replying Affidavit the Respondent/Plaintiff opposes the application saying he is not to blame for the delay. He says the court was only listing old cases of 2003 for hearing.

There is no dispute that this case was instituted in February 2009.

I have looked at the record and noted that the new Civil Procedure Rules have not been complied with.

Secondly I do confirm that for administrative purposes and backlog of cases there were instructions that only very old matters be given priority in the fixing of hearing dates.

The Plaintiff/Respondent may therefore not be wholly to blame for the delay. The Court takes full responsibility.

Having said that much, I urge the parties herein to comply with the New Rules so that the matter can be sorted out and listed for hearing.

I therefore decline to grant the Orders sought and dismiss the Application dated 1/10/2010.

Costs in the Cause.

DATED, SIGNED AND DELIVERED AT EMBU THIS 17TH DAY OF NOVEMBER 2011.

H.I. ONG'UDI
JUDGE