

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 240 of 1999

JONATHAN MAINA MUTHUI

alias ITHENYA.....PLAINTIFF

Versus

ELIAS WANJIKU RUNO.....1ST DEFENDANT

MARY NYAMBURA RUNO.....2ND DEFENDANT

RULING

The 2nd defendant herein, Mary Nyambura Runo, applied to have this suit to be dismissed for want of prosecution in the motion dated 15th September 2009. she swore an affidavit in support of the application. When the motion came up for interpartes hearing, Mr. Muthui, learned advocate for the plaintiff admitted having been served with the motion. The learned advocate stated that he had lost contact of the plaintiff and that is why he did not file any response. Pursuant to the provisions of order L rule 16(3) of the Civil Procedure Rule the 2nd defendant was allowed to proceed with the hearing of the motion exparte.

I have considered the oral submission of Mr. Mindo, learned advocate for the 2nd defendant. I have also considered the grounds set out on the face of the motion and the facts deponed in the supporting affidavit of Mary Nyambura Runo. There is no doubt that this suit was filed in 1999. The record shows that the plaintiff has not taken any serious steps to have the suit listed for hearing. No good reasons have been shown as to why the suit has not been prosecuted for more than a decade. I am convinced that the pendency of any suit will always cause anxiety on the part of the defendant. For the above reason I hereby allow the motion by dismissing the suit for want of prosecution with costs to the 2nd defendant.

Dated and delivered this 13th day of January 2010.

J.K. SERGON
JUDGE

N/A for parties.

J.K. SERGON
JUDGE