



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 702 of 2005**

**RUTH WAIRIMU KIMOTHO .....PLAINTIFF**

**AND**

**MARY MURUGI NGANGA.....1<sup>ST</sup> DEFENDANT**

**AGNES NJERI.....2<sup>ND</sup> DEFENDANT**

**TERESIAH WANJIRU .....3<sup>RD</sup> DEFENDANT**

**R U L I N G**

The Plaintiff filed this suit by way of originating summons on 8<sup>th</sup> June, 2005 seeking the determination that she had acquired land parcel No. LOC.8/YAMUGWE/858 by adverse possession having been in continuous and uninterrupted possession of the same for a period in excess of 12 years. On 14<sup>th</sup> July, 2005 the 1<sup>st</sup> Defendant filed a replying affidavit on her own and on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants denying the claims in the summons and supporting affidavit. Since then, the Plaintiff has not taken any step to have directions taken or the suit set down for hearing. On 10<sup>th</sup> February, 2009 the Defendants filed this application under Order 16 rule 5(a) and Order 35 rule 12 of the Civil Procedure Rules to have the suit dismissed with costs for want of prosecution. The application was served but elicited no response.

About 3½ years had passed when the application was filed. The Plaintiff just filed the summons and then abandoned the matter. She did not respond to the application and one cannot say, therefore, that she wants to remedy her default. The purpose of Order 16 rule 5 (a) of the Civil Procedure Rules is to provide the court with a discretion to disencumber itself of cases in which the parties appear to have lost interest and also to relieve the Defendants of the burden of such cases hanging around their necks. I order the summons dismissed with costs for want of prosecution.

**DATED AND DELIVERED AT NAIROBI**

**THIS 10<sup>TH</sup> DAY OF MARCH 2010**

**A. O. MUCHELULE**

**J U D G E**