

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)

CIVIL SUIT 900 OF 2000

JACQUELINE AKINYI OTIENO.....1ST PLAINTIFF RESPONDENT

TERESIA AKUMU.....2ND PLAINTIFF RESPONDENT

- versus-

RASHID MBARUK t/a TAWFIQ.....1ST DEFENDANT

BUS SERVICES

GODFREY CHIRA KABAKI.....2ND DEFENDANT APPLICANT

R U L I N G

The 2nd Defendant in this suit has applied through this Notice of Motion dated 24th July 2008 to have the Plaintiff's suit against him dismissed for want of prosecution.

From the affidavits filed and the grounds on the basis of which the Notice of Motion is filed; there is no dispute that there has been a delay of four years from the time pleadings closed.

The Applicant is now pleading that he is already prejudiced by the long delay. The Respondents have no answer to that, apparently themselves not feeling prejudiced by the long delay, but go on to give the reason that the delay is caused by lack of money to pay for costs of the suit on the side of the Plaintiff. Nothing is brought before the court to show how the financial situation on the side of the Plaintiff's is going to be improved or how the problem is going to be solved. Ameka And Company, Advocates, who are acting for the Respondents say they have been paid only Ksh.10,000/= and are waiting for more payment before they move the matter to hearing and submit that without that payment the suit cannot move to hearing, and in the end they are saying the matter has to stay and wait for the money to come. I expected them to say that since money was not available to enable the suit be heard, they before or without payment, would now have the suit heard to assist their client so that no prejudice is caused to any party. They are not saying that.

In the circumstances, it appears to me that the Applicant must be facing real injustice in this matter and that he will suffer the same if this Notice of Motion is not granted.

Accordingly, the said Notice of Motion is hereby granted as prayed.

Dated this 5th day of June 2009.

J. M. KHAMONI

JUDGE

