



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
Civil Case 116 of 2005

MATHEWS ONYANGO MITERE.....PLAINTIFF.

VERSUS

AGGREY MULURE.....DEFENDANT.

RULING.

On the 25th day of May, 2009 the High Court issued a Notice, pursuant to the provisions of order XVI Rule 2(1) of the Civil Procedure Rules, to Odhiambo BFO & Co. Advocates for and on behalf of the plaintiff, to show cause why the suit herein should not be dismissed for want of prosecution.

The said notice was served on both the advocate for the plaintiff and the advocate for the defendant by Monica Njuguna a court process server. The affidavit of service sworn on 3rd June, 2009 filed herein is evidence of such service.

In response thereto the plaintiff filed a supporting affidavit sworn on 29th June, 2009 through his advocate, Mathews Onyango Mitere. It was contended on behalf of the plaintiff, that he has been ailing for a long time. That he is 91 years old and have undergone three operations which has curtailed his movement considerably. It is instructive to note that no medical documents were exhibited in support of his illness.

From the court record it is clear to me that:-

- (i) The plaint was filed on 5th October, 2005;
- (ii) Summons were issued on 12th October, 2005;
- (iii) Memorandum of appearance filed on 5th October, 2005; and
- (iv) Defence filed on 5th April, 2006.

Since 5th April, 2006 no action has been taken by the respondents. Not to mention that even reply to defence has not been filed. Order XVI Rule 5 of the Civil Procedure rules provides:-

“If within three months after –

- (a) *the close of pleadings; or*
- (b) *[deleted by L.N. 36/00]*
- (c) *the removal of the suit from the hearing list; or*
- (d) *the adjournment of the suit generally, the plaintiff, or the court of its own motion on notice to the parties does not set down the suit for hearing, the court may order the suit to be dismissed; and in such a case the plaintiff may subject to the law of limitation, bring fresh suit”*

Given the history of this case, as enumerated herein above, it is plain and obvious that the plaintiff lost interest in the case three years ago. However, in the wider interest of justice, I now give the plaintiff the last chance.

Accordingly, the plaintiff is ordered to take all necessary steps to have this matter processed and heard within the next 12 months from the date hereof. In default the suit shall automatically stand dismissed for want of prosecution. There shall be no orders as to costs.

Dated and delivered at Kitale this 27th day of July, 2009.

N.R.O. OMBIJA.

JUDGE.

N/A for Plaintiff.

N/A for Defendant.