

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Case 3 of 2004

SAFANIA ARAP CHIRCHIR.....PLAINTIFF

VERSUS

LAWRENCE MUGALA TSIKHANDA.....DEFENDANT

RULING

Before me is an application by way of Notice of Motion brought under Order XVI Rule 5 (d) of the Civil Procedure Code in which the Defendant is seeking orders that the Plaintiff's suit be dismissed for want of prosecution. In support of the application B. O. MANANI Counsel for the Defendant has sworn an affidavit giving grounds. The main ground for the application is that the Plaintiff has taken no step to have the suit set down for hearing.

Mr. Choge Counsel appearing for the Plaintiff in opposing the application submitted that the Defendant's application is misconceived since the Plaintiff had passed away on 22nd January, 2007 and in the circumstances he could not have taken steps to have the suit set down for hearing. This fact was made known to the Defendant's Counsel way back in the year 2008. On perusal of the record it shows that when this application came for hearing on 18th June, 2008 before Ibrahim Judge, Counsel for the Defendant is shown to have informed the Court that the Plaintiff was already dead.

That being the position this application that the suit be dismissed because the Plaintiff has taken no step to set the suit down for hearing is not tenable and is dismissed.

Costs to be costs in the suit.

DELIVERED AND DATED AT ELDORET THIS 28TH DAY OF OCTOBER, 2009.

J. L. A. OSIEMO

JUDGE