

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NYERI

Civil Case 13 of 1996

KENYA LOCAL GOVERNMENT

WORKERS UNION..... PLAINTIFF

Versus

NYERI COUNTY COUNCIL Through

THE CLERK TO THE COUNCIL DEFENDANT

RULING

The defendant herein, took out the Notice of Motion dated 7th May 2009 in which it applied for this suit to be dismissed for want of prosecution under Order XVI rule 5 of the Civil Procedure Rules. This court allowed the defendant to prosecute the Motion *ex parte* under the provisions of Order L rule 16(3) of the Civil Procedure Rules when the Plaintiff failed to file a replying affidavit nor grounds of opposition despite service having been effected upon it. The Motion is supported by the affidavit of Sammy Karanja Njuguna sworn on 7th May 2009.

It is the submission of the defendant that seven months had elapsed at the time of filing the motion since the suit was last in court yet the plaintiff has not deemed it fit to list the case for hearing. It is said the prolonged delay to have the matter determined has greatly prejudiced the defendant in that it is held at ransom to face an uncertain future.

I have taken into account the grounds set out on the face of the Motion and the facts deponed in the supporting affidavit. It is not in dispute that this suit was last before court on 29th September 2008 for the delivery of the ruling in respect of the application dated 18th February 2008. It is not also in dispute that since then, the plaintiff has not taken any steps to have the suit fixed for hearing. No explanation has been given why it has not moved the registry to fix the suit for hearing. It is now over twelve months since the suit was in court for a ruling yet the plaintiff has not bothered to take the necessary steps to have it listed for hearing. Under Order XVI rule 5 of the Civil Procedure Rules, if three months passes after close of pleadings or the removal of the suit from hearing list or the adjournment of the suit generally, the suit is not set down for hearing, the defendant is entitled to seek for an order to have the suit dismissed for want of prosecution. The record shows that the plaintiff filed this suit on 16th January 1996. The plaint and the summons to enter appearance were served. In the aforesaid plaint the plaintiffs sought for an order of injunction to restrain the defendant from declaring its members redundant. The defendant instructed the firm of Muthoga Gaturu & co. Advocates to enter appearance and file a defence. The aforesaid firm of advocates filed a defence on 8th February 1996. It would appear pleadings closed seven days from the date of service of the defence dated 8th February 1996. It is apparent that pleadings closed about 13 years ago. The plaintiff appear to have engaged itself in a plethora of applications to the extent that it forgot about the main suit. I am convinced that the defendant will be greatly prejudiced if this suit continues to pend since key witnesses it would have relied upon may either be retired, dead and or untraceable. In the circumstances a fair trial is not envisaged.

I find the delay to prosecute the suit to be unexplained, inordinate hence inexcusable . For the above

reason this suit is ordered dismissed for want of prosecution as prayed in the Motion dated 7th May 2009 with costs to the defendant.

Dated and delivered this 11th day of November 2009.

J.K. SERGON

JUDGE