

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1037 of 1996

SIMON NJOROGE MWANGI.....PLAINTIFF

VERSUS

NAIROBI CITY COUNCIL1ST DEFENDANT

C.M. KANDUTHU2ND DEFENDANT

RICHARD CHEPKONGA.....3RD DEFENDANT

R U L I N G

There is before court a notice of motion application dated 19/11/07 by the 1st defendant seeking dismissal of the suit of the plaintiff herein for want of prosecution. The application is brought under Order XVI rule 5 of the Civil Procedure Rules.

Affidavit evidence before court shows that the plaintiff/respondent was served with the notice of motion through his advocates on record, i.e. Gichuki King'ara & Co. Advocates on 19/02/08 and that they duly acknowledged the application by affixing their stamp and signing within the stamp. The notice of motion indicated that hearing was to be today, 04/06/08. However, the plaintiff has not appeared at today's hearing either through counsel or in person.

The supporting affidavit of Mary N. Ng'ethe, Director of Legal Affairs in the City Council of Nairobi which is the 1st defendant/applicant herein shows that the last time this matter was in court was on 26/03/01. I have been informed by counsel for 1st defendant/applicant that the plaintiff fixed that date but failed to appear at the hearing. Today's date for hearing of the present application for dismissal of the plaintiff's suit is clearly indicated on the notice of motion. The application plus its supporting affidavit were served on the plaintiff/respondent but he has not bothered to appear at today's hearing and no explanation for non appearance has been proffered. I infer from the plaintiff's/respondent's conduct that he has lost interest in pursuing his suit. Accordingly, the notice of motion application dated 19/11/07 is allowed and the plaintiff's suit filed in 1996 hereby dismissed for want of prosecution. The plaintiff/respondent shall bear the 1st defendant's/applicant's costs of the suit and of the present application.

Orders accordingly.

Delivered at Nairobi this 4th day of June, 2008.

B.P. KUBO

JUDGE