

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Civil Case 228 of 2001

PETER MWAI MIGWI & OTHERS PLAINTIFF

versus

PAUL MWAI KABIRU & OTHERS..... DEFENDANT

RULING

The second, fourth and fifth defendants have moved the court under Notice of Motion dated 7th April 2008 seeking for the dismissal of this suit against them for want of prosecution. The applicants state that this matter was last in court on 10th May 2007 when the same was stood over generally. That the plaintiff had failed to proceed with the matter and that three months had expired since then. In opposition to that application the plaintiff stated that indeed the matter was before court on 10th May 2007. Thereafter the plaintiffs desired to amend the plaint that they were unable to file the application because the court file was said to have been missing. The plaintiffs to prove that they intended to amend the plaint annexed the application for amendment.

I have considered the arguments raised before me and although the plaintiffs did not prove that they had attempted to get the file at the registry I am of the view that this is a case where the plaintiffs should be given the benefit of their doubt. I therefore decline the prayers that are sought and the Notice of Motion dated 7th April 2008 is dismissed with costs being awarded to the defendant.

DATED AND DELIVERED THIS 21ST DAY OF JULY 2008

MARY KASANGO

JUDGE