

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

Misc Cause 263 of 2001 (OS)

ROSE WANJIRU STOKESPLAINTIFF

VERSUS

JONATHAN JAMES STOKESDEFENDANT

R U L I N G

Pursuant to Order XVI rule 5(a), (c) and (d) and order L rule 1 of the Civil Procedure rules, Jonathan James Stokes the defendant herein, took out a motion in which he sought for this suit to be dismissed for want of prosecution. The defendant has filed an affidavit he swore in support of the motion. Despite having been served, Rose Wanjiru Stokes the plaintiff chose not to respond to the application.

It is the submission of the defendant that the plaintiff has failed to take any steps since 7th December 2001 to have the Originating Summons heard and determined. This court has been urged to hold that the pendency of suit is to the utter detriment of the defendant.

I have perused the record and the submissions over this motion. What emerges out clearly is that the plaintiff did not take any steps to have the originating summons dated 27th September 2001 to be listed for hearing since 10th December 2001. Despite being prompted to give an explanation for such a delay. In the circumstances, I have no reason as to why I should refuse the defendant's application. The pendency in my view is causing untold suffering to the defendant in view of the fact that a claim of Kshs.50,000/- maintenance is hanging over his head.

In the end I am satisfied that the suit should be and is hereby dismissed for want of prosecution under Order XVI rule 5 of the Civil Procedure rules. Costs of the motion which shall be paid by the defendant.

Dated and delivered at Mombasa this 9th Day of February 2007.

J.K. SERGON

J U D G E