



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Civil Case 10 of 2004**

**OBADIA KIPRUTO KIRUI:.....PLAINTIFF**

**VERSUS**

**PETER KIPKEMBOI RONO:.....DEFENDANT**

**RULING**

The applicant PETER KIPKEMBOI RONO, who is the defendant in this suit seeks court to dismiss the Plaintiff's/Respondents suit for want of prosecution. the plaintiff/Respondent was served but he did not appear today. Also, though served with the application he did not file a replying affidavit or grounds of opposition.

The Respondent filed this suit vide a plaint on 21<sup>st</sup> January,2004 seeking the registration of the applicant as the proprietor of land parcel **No. NANDI/CHEPTERIT/856** to be cancelled and he be confirmed as the sole proprietor of the said land. He also, at the same time filed an application seeking for an order of injunction. Ruling was delivered on 11<sup>th</sup> February,2004. the applicant has deponed that since the delivery of the ruling on 11<sup>th</sup> February,2004 the respondent has not taken any steps to prosecute the suit. It was submitted that the delay is inordinate and inexcusable.

I have considered the application. It is clear that the respondent has not taken any steps to prosecute the suit since 11<sup>th</sup> February,2004 when his application was dismissed. Order 16 Rule 5(a) CPR under which the application is brought provides:-

**“If within three months after**

**(a) the close of proceedings**

**(b).....**

**(C).....**

**(d) The defendant of the suit generally, the plaintiff or the court on its own motion on notice to the parties, does not set down the suit for hearing, the defendant may either set the suit down for hearing or apply for its dismissal”.**

As the plaintiff took no action since February,2004 the defendant had the option of setting the suit down for hearing or apply for its dismissal. He chose the later. The respondent has not explained why he has not taken any action since February,2004. I do note that after the ruling of 11<sup>th</sup> February,2004 his counsel sought for leave to appeal and leave was granted. A Notice of appeal was filed on 16<sup>th</sup> February,2004. It is however not clear if the appeal was filed and if so what is the position. If the appeal was filed the respondent, who was served with this application would no doubt have explained that to court. As it were he did not file any papers or reply to explain why he has not taken any steps. I find the delay to be inordinate and there is nothing to mitigate for it. It is unexplained in any way. this therefore is a fit case for dismissal for want of prosecution. In the circumstances the application is allowed. The plaintiffs case is dismissed with costs.

**DATED AND DELIVERED AT ELDORET ON 18<sup>th</sup> APRIL,2007.**

**KABURU BAUNI**

**JUDGE**