

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE 133 OF 1990

DAVID NGUREPLAINTIFF

V E R S U S

BERNARD KANJAU NGAMAUDEFENDANT

R U L I N G

Although consent judgment on liability was entered 20th May, 2002, the Plaintiff has never further prosecuted his case so that damages may be assessed. The Defendant therefore has sought by notice of motion dated 5th February, 2007 an order for dismissal of the Plaintiff's suit for want of prosecution under Order 16, rule 5 (d) of Civil Procedure Rules (the Rules). Under that rule, if, within three months after the adjournment of the suit generally, the Plaintiff, or the court on its own motion on notice to the parties, does not set down the suit of hearing, the Defendant may either set the suit down for hearing or apply for its dismissal.

The record of the court shows that on 22nd March, 2001 the suit was set down for hearing for the 16th and 17th of October, 2001. It appears that the matter was not listed on either one of those two days. There is no evidence that the Plaintiff has taken any steps since the 22nd March, 2001 to have his damages assessed. He was duly served with the present application; he neither filed any papers in response nor was there appearance for him at the hearing of the application.

In the circumstances, therefore, the Plaintiff's suit herein is hereby dismissed with costs under Order 16, rule 5(d) of the Rules. The Defendant may set down his counterclaim for hearing. Costs of the application to the Defendant. Orders accordingly.

DATED AT NAIROBI THIS 26TH DAY OF JUNE 2007

H. P. G. WAWERU

J U D G E

DELIVERED THISON 29TH DAY OF JUNE 2007