





by the defendants to have the matter listed for hearing before. This shows that they exercised the 1<sup>st</sup> option available to it under OXVI r. 5(d) of the Civil Procedure Rules. It served the application which already had a hearing date and the same was ignored. What else would the defendant be expected to do? It is the duty of a plaintiff in a suit to ensure that his matter is heard and determined expeditiously. It is actually not the duty of the defendant to kick a sleeping plaintiff out of his slumber. As an act of good faith however, the defendant who wishes the matter to be disposed of will move the court himself by taking a hearing date and serving the plaintiff. When a defendant does so and the plaintiff remains in a state of inertia, then when such a defendant moves the court for dismissal of the plaintiff's suit, his application is taken seriously. In this case, even the application for dismissal did not elicit any response from the plaintiff who continues to enjoy interim orders at the expense of the defendant. The court should not stand aside and allow such a plaintiff to enjoy such orders. This amounts to blatant and gross abuse of the court process. As the matter stands now, no reason has been given by the plaintiff to explain his blissful inactivity for the last almost nine years. I have no reason whatsoever to deny the applicant herein the orders he seeks. He has convinced the court that the only justifiable order in this matter is to have the plaintiffs suit dismissed with costs for want of prosecution. Accordingly, the application dated 26.6.2006 is hereby allowed. The plaintiff's suit is hereby dismissed with costs to the defendant/applicant. Orders accordingly.

**W. KARANJA**

**JUDGE**

**DELIVERED, Signed and Dated at Bungoma this 12<sup>th</sup> day of June 2007 in the presence:- Mr. Watanga for Mr. Makokha for applicant.**