



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 2340 of 1985**

**ISABELLA WANJIKU.....1<sup>ST</sup> PLAINTIFF**

**ESTHER WAMBUI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**FRANCIS MWANGI THUO.....1<sup>ST</sup> DEFENDANT**

**JOHN MBUGUA NDUATI.....2<sup>ND</sup> DEFENDANT**

**RULING**

This is an application by the Defendants under Order XVI Rules of the Civil Procedure Rules for an order that the Plaintiff's suit against him be dismissed for want of prosecution. The Defendant says there has been inordinate delay. In support of the application Mercy Wanjau, Advocate for the Defendant has sworn an affidavit giving grounds for the application.

The suit was filed on August 3, 1985. The relief sought is general damages arising from injuries suffered and expenses incurred as a result of a road accident that occurred on 10<sup>th</sup> April 1984. The Defendant entered appearance on 3<sup>rd</sup> September 1985 and filed a defence on 10<sup>th</sup> September 1985.

This case has been in court for the last 23 years and the last time was fixed for hearing was 28<sup>th</sup> 1994 and since then the Plaintiff has not taken any steps to set it down for hearing.

The question of delay in bringing actions to speedy conclusion was exhaustively considered by the Court of Appeal in England in ALLEN VS. SIR ALFRED MC ALPINE & SONS LTD [1968] 1 ALL ER 543 where it was held that when the delay is prolonged and inexcusable, and is such as to do grave injustice to the one side or the other or both, the court may in its discretion dismiss the action straight away. On the other hand this power should not be exercised unless the court is satisfied (1) that the default has been intentional contumelious (2) that there has been inordinate and inexcusable delay on the part of the Plaintiff or his lawyers (3) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in action or is likely to cause prejudice to the Defendant.

This claim arises out of a road traffic accident. It has been in court for the last 23 years. The Plaintiffs were served but did not file any paper in opposition to the application nor did they appear in court to oppose the application.

The delay is inordinate and inexcusable and the Defendant will be prejudiced if the suit is allowed to continue, and justice cannot be done now.

Accordingly in exercise of my discretion I allow the application and dismiss the suit for want of prosecution.

I award the Defendants the costs of the suit and of this application.

Dated and delivered at Nairobi this 20<sup>th</sup> day of July 2007.

**J.L.A. OSIEMO**

**JUDGE**