



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Civil Case 130 of 1992**

**JOSEPH MARETE ..... PLAINTIFF**

**VERSUS**

**MRS.FLORENCE LAWI IMATHIU ..... DEFENDANT**

**RULING**

The applicant in a Notice of Motion filed on 17<sup>th</sup> August, 2004 is seeking that the court's order dismissing his suit for want of prosecution be set aside and the suit be reinstated.

He has argued that no notice to show cause why the suit should not be dismissed was served upon him. Secondly he explains that from 1997 he has faced a series of misfortunes involving deaths and illness of his close family members which resulted in heavy expenditure on his part.

This drained him financially and he was not able to take any steps in the matter as a result. However, when his status improved he learnt that his suit had been dismissed. There was no reply to the application. But counsel for the respondent stated from the bar that the delay was inordinate. I have considered the application and submissions by counsel.

The applicant brought this suit on 16<sup>th</sup> April 1992, seeking judgment against the respondent for damages, interest and costs for wrongful termination of employment.

Between 16<sup>th</sup> April, 1992, when the suit was filed and 17<sup>th</sup> August 2004 when this application was filed there were several attempts to have the suit heard but each time it was adjourned. In fact the last time the applicant took a hearing date at the registry was on 17<sup>th</sup> June, 1994. It is clear from the record that between this date to the date when this application was filed the applicant had not taken any steps to have the suit heard. That is a period of ten years. On 27<sup>th</sup> October, 2000, pursuant to the provisions of Order 16 Rule 6 of the Civil Procedure Rules, the court (Hon.Omwitsa, Commissioner of Assize) dismissed the entire suit for want of prosecution.

The applicant has now brought the present motion seeking that the orders of 27<sup>th</sup> October, 2000 be reviewed, set aside and/or vacated. The application is expressed to be brought under Order 44 of the Civil Procedure Rules (without citing the specific rule).

A court can review its own order if the order is one from which an appeal is allowed but from which no appeal has been preferred – or if the order is one from which no appeal is permitted.

The applicant must, in addition to the foregoing, satisfy the court that he has come by new and important

matter of evidence which was not available at the time the order was made, or that there is a mistake or error which is apparent on the face of the record. The court may also review its order for any other sufficient reason.

Finally it is a requirement that application for review be made without unreasonable delay. Has the applicant brought himself within the above principles? I do not think so.

To begin with no appeal lies from an order of dismissal under rule 6 of order 16 of the Civil Procedure Rules, and therefore the applicant was entitled to bring the application.

However, the applicant has not shown that he has discovered new and important matter that was not available when the order was made. Neither has he demonstrated the existence of any mistake or error which is apparent on the face of the record.

He has averred, however, that he had series of misfortunes which drained his finances. He has also deposed that he was not notified and asked to show cause why his suit should not be dismissed.

Are these matters which can be considered under the last rubric, “for any other sufficient reason?”

“Again I do not think so. The applicant has not stated how his financial difficulties prevented him from taking steps in the matter. He has failed to provide evidence of his misfortunes. But more fundamentally, he was not entitled to a notice as the dismissal was pursuant to order 16 rule 6 which provides;

“ 6. In any case not otherwise provided for in which no application is made or step taken for a period of three years by either party with a view to proceeding with the suit, the court may order the suit to be dismissed; and in such case the plaintiff may, subject to the law of limitation, bring a fresh suit”

For these reasons this application fails and it is ordered dismissed. I make no orders as to costs.

DATED AND DELIVERED AT MERU THIS 20<sup>TH</sup> DAY OF JULY, 2007

W. OUKO

JUDGE