



REPUBLIC OF KENYA

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

**Civil Suit 73 of 2005**

**BISMARCK NYAKUNDI NYANYUKI:.....PLAINTIFF**

**VERSUS**

**DALKUDI RUTO CHEPSAT:.....1<sup>ST</sup> DEFENDANT**

**MAGDALENE CHEPKORIR RUTO:.....2<sup>ND</sup> DEFENDANT**

**RULING**

The applicant MAGDALINE CHEPKORIR RUTO who is the second defendant in the suit has brought this application under order 16 rule 5(d) CPR seeking the court to dismiss the suit for want of prosecution and costs of the suit.

She deponed that since the suit was filed on 9<sup>th</sup> August 2005 it had not been fixed for hearing. By the time the application was filed 10 months had passed.

In reply the plaintiff stated that the applicant who is the 2<sup>nd</sup> defendant is a wife of the 1<sup>st</sup> defendant. The first defendant died and the applicant has been reluctant to take letters of Administration to facilitate substitution. Both defendants were register as co-owners of land in dispute.

Indeed the Respondent had not taken any steps to prosecute the case within the stipulated time. However the explanation by the plaintiff is pliable. The 1<sup>st</sup> defendant is said to have died soon after the suit was filed. The applicant by his wife is the person who should take letters of Administration but she is reluctant to do so. The Respondent could not fix the case for hearing before substitution. Both defendants were registered as co-owners of land in dispute.

Indeed the Respondent had not taken any steps to prosecute the case within the stipulated time. However the explanation by the plaintiff is plumable. The 1<sup>st</sup> defendant is said to have died soon after the suit was filed. The applicant being his wife is the person who should take Letters of Administration but she is reluctant to do so. The Respondent could not fix the case for hearing before substitution. He should take the necessary steps to substitute as to do so he does not need Letters of Administration. I will use my discretion and grant him a chance to put his house in order.

In the circumstances the application is dismissed. Respondent will however pay costs of the application arrived at Shs.3500/= to the applicant.

It is so ordered.

Dated and Delivered at Eldoret on 3<sup>rd</sup> July,2007

**KABURU BAUNI**

**JUDGE**

**Delivered in the Presence of:-**

C/C - David

Mr. Mwetich for Odede for Applicant

Mr. Buluma for Ombati for Respondent.