



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**Civil Case 1213 Of 2002**

**BETHWEL KANDIE.....PLAINTIFF**

**VERSUS**

**KENYA TEA DEVELOPMENT AGENCY.....1<sup>ST</sup> DEFENDANT**

**NGERE TEA FACTORY CO. LTD.....2<sup>ND</sup> DEFENDANT**

**JOHN CHEGE KAROBA.....3<sup>RD</sup> DEFENDANT**

**RULING**

The defendant by this Notice of Motion dated 2<sup>nd</sup> November 2005 seeks orders that the plaintiff's suit be dismissed with costs for want of prosecution. He also prays for costs of the suit as well as of this application. The application is premised on the ground that the suit was filed on 5<sup>th</sup> July 2002 and no steps have been taken to set down the same for hearing.

The application is opposed by the plaintiff who blames the former advocate on record who never informed the plaintiff of what was going on. He was instructed and came on record on 8<sup>th</sup> February 2006 after the plaintiff was served with this application. He also blames the defendant for delay in that although the plaint was filed on 5<sup>th</sup> July 2002 he only filed his defence on 10<sup>th</sup> February 2005 about 3 years later.

The plaintiff has given valid reasons why he never took steps. He was let down by his previous lawyer. He has now engaged another lawyer and is ready to pursue this suit.

He should be allowed to do so and if the defendant is awarded adequate costs, there will be no injustice.

The application is dismissed but the plaintiff will bear the costs of this application.

It is so ordered.

Dated and delivered at Nairobi this 21<sup>st</sup> day of February 2006.

**J.L.A. OSIEMO**

**JUDGE**