



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

**Civil Case 4998 of 1989**

**REBECA WANJIKU MBURU.....PLAINTIFF**

**VERSUS**

**JOGOO KIMAKIA BUS SERVICES.....DEFENDANT**

**RULING**

By way of this Notice of Motion, dated 10<sup>th</sup> February 2006 and expressed to be brought under Order L Rule1 Order XVI Rule of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeks orders that the plaintiff's suit be dismissed for want of prosecution.

The application is based on the ground that the plaintiff has not taken any action to fix the suit down for hearing. The application is also supported by an affidavit sworn by Njoroge Nduati the Managing Director of the 1<sup>st</sup> Defendant. The date for this application was taken ex parte and there was an order that hearing notice to issue. There is a Return of Service filed and sworn by Daniel Karuru Mwaura in which he has deponed in paragraph 3 that on 10<sup>th</sup> February 2006 he prepared a Notice of Motion and Supporting Affidavit and filed in court to be served upon Makhandia i.e. Makhandia & Co. Advocates.

That on 14<sup>th</sup> February 2006 he proceeded to Kencom House 1<sup>st</sup> Floor Room No.157 where the office of Makhandia & Co. Advocates are situate and served the Notice of Motion upon the clerk of the firm who acknowledged receipt by stamping and signing the principal copy.

There was proper service but the respondent did not file any papers to oppose the application. This suit was filed on 12<sup>th</sup> November 1989. Pleadings were closed on 10<sup>th</sup> March 1990 when defence was filed. No steps have been taken to set down the suit for hearing.

Twenty one years have elapsed since the time when the Cause of Action arose and Sixteen years having elapsed since the pleadings had closed the plaintiff's delay had been excessive/fragrant and inordinate and it would be unfair and unjust to call upon the defendant to meet the plaintiff's claim.

Accordingly, I allow the defendant's application and dismiss the suit with costs to the defendants together with costs of this application.

Dated and delivered at Nairobi this 13<sup>th</sup> day of June, 2006.

**J.L.A. OSIEMO**

**JUDGE**