



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

**Civil Case 3539 of 1990**

**ROSEBELLA AKOTH ODIPO.....  
.....APPLICANT**

**VERSUS**

**MUGOYA CONSTRUCTION & ENGINEERING CO.  
LTD.....1<sup>st</sup> DEFENDANT**

**KARURU MBUGUA.....  
.....2<sup>ND</sup> DEFENDANT**

**RAGIRA AOSA.....  
3<sup>RD</sup> DEFENDANT**

**RULING**

The 1<sup>st</sup> defendant by way of this Notice of Motion expressed to be brought under Order L Rule 1, order XVI Rule 5(d) of the Civil Procedure Rules and Section 3A of the Civil Procedure Codes seeks orders that the plaintiff's suit be dismissed for want of prosecution.

The application is based on the grounds that there has been inordinate delay by the plaintiff and or his advocates on record in prosecuting their case in court now over 11 years; that the plaintiffs apparent disinterest and delay in prosecuting this suit is inexcusable, that the first defendant should not be kept in indefinite abeyance by the plaintiff's reluctance in prosecuting her case. The application is also supported by an affidavit sworn by Rose Munyasia counsel seized with this matter who avers that this is the second application by the applicant to have the suit against the applicant dismissed for want of prosecution. The first one was heard on 12<sup>th</sup> November 2003 but was dismissed for being premature, that the plaintiff's advocate had alleged that the plaintiff had passed away and was in the process of obtaining letters of administration but todate neither has the said advocate made any application for substitution nor provided the letters of administration nor is there proof tendered by the said advocate to show that the plaintiffs herein has passed away.

A suit can be dismissed for want of prosecution if the plaintiff has been guilty of prolonged and inexcusable delay which has seriously prejudiced the defendant. In the instant suit there is no explanation for the delay for the last 11 years. This is a suitable case for dismissal for want of prosecution. The application is allowed in terms of prayer 1 and 2 of the Notice of Motion dated 10<sup>th</sup> August 2005.

Dated and delivered at Nairobi this 18<sup>th</sup> day of July 2006.

**J.L.A. OSIEMO**

**JUDGE**