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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
HIGH COURT CIVIL CASE 21 OF 2000

JOSES M'MUGA (Suing as the
Administrator of the estate of
LENAH KARIMI JOSES – DECEASED) PLAINTIFF/RESPONDENT
VERSUS
MARKSMAN CONCRETE LIMITED DEFENDANT/APPLICANT

RULING

1. The Defendant herein seeks Orders that the suit herein be dismissed for want of Prosecution Under Order XVI Rule 5 of the Civil Procedure Rules.
2. The ground in support is that the Plaintiff has since the pleadings closed in 2002 taken no steps at all to have the suit set down for hearing. It would appear, so the Defendant states in his Supporting Affidavit, that the Plaintiff has lost interest and yet the Defendant is anxious to have matter behind it.
3. The Plaintiff in reply argues that the Court file disappeared soon after the Defence was filed and when it was traced in March 2004, the Court Diary was full and no dates could be given.
4. I would have been happy to dismiss the suit but I am alive to the fact that the High Court in Embu had no regular Judge until September 2004. I have heard the Plaintiff and in spite of the delay in fixing the matter for hearing, he is still interested in the suit. I also note that some letters were sent to Advocates previously acting for the Plaintiff to fix hearing dates. It cannot be said that nothing was done in three years. Something was done albeit not enough.
5. I shall dismiss the Application but costs thereof shall be paid to the Applicant as a way of telling the Plaintiff that the delay is costly but discretion has swung his way.

Orders accordingly.

Read in Open Court this 24th day of February 2005

I. LENAOLA
JUDGE

In the presence of;

Mr. Muchiri for Defendant
N/A for Plaintiff

I. LENAOLA
JUDGE

