



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**  
**Civil Case 220 of 1986**

**ERASTO KARANI GITURI & ANOTHER.....PLAINTIFFS**  
**Versus**  
**GERALD MUNENE MUGO.....DEFENDANT**

**RULING**

In this Notice of Motion dated 4th February 2004 the Applicants in prayer (a) want the court order dated 23rd December 1998 reviewed and set aside; and in prayer (b) they want the suit in this matter be restored.

The Respondent was served but did not bother to come and react to the application. I have therefore heard the application ex-parte.

The background to this application is that after filing this suit, the applicants before me now did not bother to prosecute it until it was dismissed on 23rd December 1998 for want of prosecution after pending in this court for seven years.

The Plaintiff continued to sleep until the year 2004 when he discovered the case had been dismissed.

The Plaintiff/Applicant is now trying to bring an excuse that the court case file went missing at one time. But there is no acceptable evidence concerning the alleged loss. A letter from the court Registry says that the case file never went missing.

It is after the Plaintiff had woken up in 2004 that he thought of bringing this application. Why should the Applicant and his counsel be unaware when their suit is dismissed for want of prosecution yet the Court Registry is always open for them all those years? The court had been made to believe the Applicant that he wanted the suit be determined on merits when in reality the Applicant wanted something else. He wanted delayed justice and the court gave him enough time. Seven years before this suit was dismissed. The Applicant does not therefore deserve more time and this Notice of Motion is not genuine and lacks merits. It should not stand. The rules allow the Applicant to file a fresh suit and perhaps he should have thought on those lines instead of coming back to this court with this Notice of Motion. If he encounters any problems on the way, those are problems of his own making and he should blame nobody else.

Accordingly, this Notice of Motion is hereby dismissed with no order as to costs.

***Dated this 27th day of May 2005.***

**J. M. KHAMONI**

**JUDGE**

Present:

Mrs. Mukuha for the Applicant.