

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

Civil Case 1003 of 2001

JOHNSON MAINA MIGWI.....PLAINTIFF

VERSUS

GRACE WAMBUI MUNGAI.....DEFENDANT

RULING

The defendant brought this application under Order XVI Rule 5 (d) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking orders that the plaintiff's suit be dismissed for want of prosecution. The application is based on the ground that there has been inordinate delay by the plaintiff in the prosecution of this suit.

The plaintiff's counsel was served on 17th February 2005 and acknowledged service. He has not filed replying affidavit. Since the suit was filed on 20th June 2001 under Certificate of Urgency, the plaintiff has never taken any steps to prosecute the suit. The plaintiff was granted an injunction on 19th December 2001 on condition that he deposits Ksh.500,000/= with the defendant within 14 days from the said date. The plaintiff did not meet the said condition and the injunction lapsed. It is now 3 years since the last activity ceased in court.

I allow the application to the extent that and order that the suit be and is hereby dismissed for want of prosecution under Order XVI Rule 6 of Civil Procedure Rules. Costs to the defendant.

Dated at Nairobi this 17th day of May 2005.

J.L.A. OSIEMO

JUDGE