

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
CIVIL SUIT 1995 OF 1996

JOHN NJUGUNA NGURU.....1ST PLAINTIFF
NJOROGE NJIRAINI 'B'2ND PLAINTIFF
PAUL MACHARIA KURIA.....3RD PLAINTIFF
LUCY WANJERI NJOROGE 'B'4TH PLAINTIFF
MRS. GACHAMBI W/O PAUL MACHARIA.....5TH PLAINTIFF
MRS. NJERI MBUGUA.....6TH PLAINTIFF
KABAKI GAKURE.....7TH PLAINTIFF

VERSUS

KIHAHANYU UNITED SOCIETY.....DEFENDANTS

RULING

The applicant and 6 others who have since died were among the founder members of the respondent society and were contributing a sum of Shs.12/= to the society. Sometimes in 1986 there arose a disagreement between them and the office bearers. Consequent thereto the office bearers refused to accept their monthly contributions. They sued the society seeking a declaration that they are members of the defendant society. The suit was set down for hearing on 16th June 1999 and the plaintiff's counsel was served. When the suit came up for hearing, neither the plaintiff nor their counsel were present and the suit was dismissed with costs. On 24th June 2005 the applicant filed this application seeking orders to set aside that dismissal order of 16th June 1999. That the suit do proceed at the instance of the 1st plaintiff. The application is premised on the ground that the applicant was unable to give instructions to his counsel to defend the suit as he was very sick. That the 2 to 6th plaintiffs have since died without their dependants applying for Letters of Administration. The application is opposed by the respondent who has filed a replying affidavit in which he has deponed that the plaintiff's suit did not raise triable issue. He applied to have the same struck out on that ground. The plaintiff counsel was served but failed to attend. The application was argued on merit and was struck out. The other ground advanced by the respondent is inordinate delay. The suit was dismissed on 24th June 1999 and this application to set the dismissal order aside was filed on 24th June 2005 about 6 years later.

In order to explain this delay the applicant stated that this was caused due to ill health. He annexed a letter from his doctor which read as follows:-

TO WHOM IT MAY CONCERN RE: JOHN NJUGUNA NGURU [62 YEARS] The above named has been my patient since January 1999. His main problem has been moderate to severe hypertension which was later complicated by development of diabetes.

He has been on medication and strict diet control and this has stabilized the two conditions. A recent check showed a blood pressure of 140/90 mmHg and blood sugar of 6.2 mmol/L both of which are acceptable for usage.

This letter does not explain the delay as blood pressure could not cause the applicant not to give his advocate instructions. The applicant was never admitted and there is no documentary evidence to show when he attended the doctor. This explanation is not satisfactory and this coupled with the fact that the plaint does not raise any triable issues make the applicant's application unmeritorious and the same is dismissed with costs to the respondent.

Delivered and dated this 6th day of October 2005.

J.L.A. OSIEMO

JUDGE