

REPULIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL MISC. NO. 100 OF 1998

KISAVI MUTUNGA.....APPLICANT
VERSUS
THE SPECIAL DISTRICT COMMISSIONER
MAKUENI DISTRICT.....RESPODNENT
AND
KAVATA MUTUNGA.....INTERESTED PARTY

R U L I N G

By notice of motion dated 16th September, 2002, the interested party moved the court under order XVI rule 5 (d) Civil Procedure Rules and Section 3A Civil Procedure Act to have the plaintiffs suit dismissed and costs to be paid to the interested party. Grounds upon which the application is grounded are that the suit last came up for hearing on 2.5.2002 when it was stood over generally with costs to the interested party and it is over 3 months since and the plaintiff has not taken any steps towards setting the suit down for hearing. That the plaintiff is therefore not interested in the suit.

Though Mr. Masika was present in court for the plaintiff and sought to make an application for adjournment, the court noted that he had not complied with the court's orders to pay Mr. Makau J. A. his costs of 2.5.2002. He therefore had no evidence before the court and the application proceeded to hearing. The record speaks for itself.

Since 2.5.2002 there is no step that the plaintiff has been taken towards the prosecution of this matter. It is over one year since. The plaintiff is not keen on having the suit prosecuted and I will allow the interested party's application to have this suit dismissed for want of prosecution. Costs of this application and the main suit to the interested party applicant.

Dated, read and delivered at Machakos this.....day of.....,2004.

R. WENDOH

JUDGE