



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

**Civil Case 451 of 1999**

**MARGARET WANJIRU KURIA.....PLAINTIFF**

**Versus**

**ELIUD NJOROGE KURIA.....RESPONDENT**

**RULING**

This Ruling determines the Notice of Motion dated 21<sup>st</sup> October 2003 filed by the defendant. He has sought for the orders dismissing the suit for want of prosecution.

The suit was filed on 5<sup>th</sup> March 1999 and the plaintiff has not taken any steps to prosecute the matter. The defendant complains that the continued pending of the suit causes him prejudice. The application is supported by the applicant's affidavit whereby he has detailed the reasons why the suit should be dismissed. The applicant relied on the provisions of Order XVI rule 5 which provides as follows:

“If within three months after the adjournment of the suit generally, the plaintiff, or the court of its own motion on notice to the parties, does not set down the suit for hearing, the defendant may either set the suit down for hearing or apply for its dismissal.”

I am satisfied that the plaintiff failed to take action to prosecute the suit for a period of over 3 months the notice was duly issued to the plaintiff and no action has been taken. I accordingly dismiss the suit for want of prosecution with costs to the defendant/applicant.

It is so ordered.

Ruling read and signed on 10<sup>th</sup> December 2004.

MARTHA KOOME

**JUDGE**