

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL CASE NO. 50 OF 1994
JOHN MBUGUA MUNGAI ::::::::::::::::::::::::::::::: PLAINTIFF
VERSUS
NYIGA NDUNDA ::::::::::::::::::::::::::::::: DEFENDANT

Coram: J. W.Mwera J.
Mrs. Nzei Advocate for Applicant/Defendant 10
N/A Advocate for Respondent
C.C. Muli

R U L I N G

The heading of the application dated 22.9.2000 includes provisions of law: O.16 r. 5(d) Civil Procedure Rules and S. 3A Civil Procedure Act. By it the prayers are that the suit herein be dismissed for want of prosecution because having been filed on 8.2.94 the plaintiff has done nothing to prosecute it. The record shows that a defence was filed on 3.3.94 followed by summons for directions, as the procedure was then on 31.8.94.

The matter came up for hearing on 17.7.96 and on 24.7.96 parties by consent referred the dispute to a District Officer (Athi River) to arbitrate. He filed his award which was read on 13.12.96 to the parties. It was never made a judgement of the court by either party.

On 2.6.99 Mrs. Nzei for the defendant/applicant desired the suit to be dismissed. Mr. Mulu for the plaintiff prayed for a month to get instructions. He was given up 1.7.99 to do so or due orders would issue.

On 16.9.99 the defendant had filed an application dated 23.4.99 to set aside the award. It was heard on 10.2.2000. A ruling followed on 21.2.2000. Setting aside of the award was refused and parties were told to do what they thought best regarding that award that has since never been made a judgement.

Mrs. Nzei applied that the suit be dismissed. In application dated 22.9.2000 was served on Plaintiff's lawyers. They did not appear or oppose the application.

This court has no alternative than to grant orders prayed. Mitigation should never last for ever.

Orders accordingly.

Delivered on 4th July 2001.

J. W. MWERA

JUDGE