

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC APPLICATION NO. 277 OF 1994

J.G. NJUGUNA.....APPLICANT

VERSUS

JOHN GITAU.....DEFENDANT

RULING

This is the Respondents application for an order that the application filed on 29.3.94 he dismissed for want of prosecution.

That application seeks an order of prohibition to prohibit Mrs H.M. Okwengu Principal Magistrate from writing an or delivering Judgment in RMCC No. 5370/91 and an order to set aside the proceeding. There is also a prayer for an order that the court do order the suit to be heard afresh.

The Applicants complaint in the application is that he was forced to proceed with his suit in the absence of his Advocate after his application for adjournment was refused.

The application for Judicial Review is partly heard by Bosire J as he then was on 20.4.94 It was last listed for hearing on 3.10.95 when it was adjourned due to failure of applicant to comply with Rule 7 of Order LIII Civil Procedure Rules.

That is to say that Applicant failed to file a copy of the order challenged and a verifying affidavit That copy of the Order and the verifying affidavit have not been filed to date. Since 3.10.95, the applicant has never set the application for hearing.

The orders complained of can be the subject of an appeal in the event that Applicants suit in the lower Court does not succeed. The proceedings in the lower Court have been pending for a long time awaiting the conclusion of the Respondent's application.

In the circumstances of this case, it is not just to leave the application pending. The Respondent failed to file a replying affidavit to explain the delay.

Although the affidavit to support the application for dismissal of the application is not signed by Applicant, the Applicant has brought to the attention of the Court of the Pendency of the Respondent's application. The Court has discretion even on its own motion to dismiss the application for want of prosecution.

For the foregoing reasons I allow the application with costs and dismiss the application dated 29.4.94 under Order XVI Rules 5 Civil Procedure Rules, for want of prosecution with costs to the Respondent (Applicant)

E. M. Githinji

Judge

18.6.2000

Mr. Muguku holding brief for Mr. Ng'an'ga present

Mr. Kiama Njau absent