



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 476 OF 2009**

**JOHN MWATI.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**NASEEM KASSAM.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**ZUBEDA NANJI.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

The defendant’s applicants have filed the notice of motion dated the 7/10/13 seeking orders that the plaintiff’s suit be dismissed for want of prosecution. The application is brought under order 17 rules 2 & 4 of the Civil Procedure Rule 2010 Cap21 of the Laws of Kenya. The applicants also seeks costs of the application. The application is based on one ground stated on the face of the application together with the affidavit of Mr. Zubeda Nanji the 2<sup>nd</sup> defendant who has been authorized by the 1<sup>st</sup> defendant to swear the affidavit.

I have read the supporting affidavit and also perused the court files.The plaintiff/respondent was served but did not attend the hearing of the application. The plaintiff’s suit was filed in September 2009. The defendants filed appearance in October 2009 and the plaintiff filed a reply to the defence in November 2009. Since then the plaintiff has done nothing to fix the suit for hearing. It is now 3 years. It is evident that the plaintiff is not keen on prosecuting the suit and as stated it is only equitable and just in the circumstances to have the suit dismissed for want of prosecution. Litigation must come to an end.

The plaintiff’s suit is therefore dismissed for want of prosecution. Costs of the application are given to the defendant.

Orders accordingly.

Dated, signed and delivered this 7<sup>th</sup> day of *March* 2014.

**R. E OUGO**

**JUDGE**

**In the presence of:**

.....**FOR THE PLAINTIFF/RESPONDENT**

.....**FOR THE DEFENDANT /APPLICANT**

.....**FOR THE DEFENDANT/APPLICANT**

.....**COURT CLERK**