



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE 644 OF 1993**

**MARY AKINYI OTIENO.....PLAINTIFF**

**VERSUS**

**KWEGA BUS SERVICE & ANOTHER.....DEFENDANT**

**R U L I N G**

The defendants have applied to have the plaintiffs' suit dismissed for want of prosecution. The basis of the application is that the plaintiff has failed to prosecute the suit since the hearing of the summons for directions on 19th January 1994.

The application is opposed. It is stated that after the summons for directions negotiations commenced to arrive at an out of court settlement.

It is true that no stops have been taken to prosecute this suit for quite some time. the court record shows that the suit has been listed for hearing n three previous occasions twice in 1995 and once in 1996. However the record does not show what transpired on those dates. Justice demands that a suit should be preserved rather than dismiss it.

That however should not be an excuse for inordinate delays in prosecuting a suit.

I have weighed the facts in the matter including the nature of the claim.

I shall, as I hereby do, exercise my discretion in favour of the plaintiff by preserving the suit but steps must be taken forthwith to dispose of this matter.

Accordingly, the application is dismissed but the plaintiff shall pay the defendants' costs occasioned by this application.

Order accordingly.

**Dated and delivered at Nairobi this 3rd day of February, 1999.**

**A. MBOGHOLI MSAGHA**

**JUDGE**