



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 96 OF 1999

KIAI MBAKI.....1ST PLAINTIFF

WAWERU MUGO.....2ND PLAINTIFF

THIONG'O KIUNGA.....3RD PLAINTIFF

VERSUS

GICHUHI MACHARIA.....1ST DEFENDANT

MWANGI KIMANGA.....2ND DEFENDANT

JAMES MAINA.....3RD DEFENDANT

DUNCAN MWAURA KAMAU.....4TH DEFENDANT

TERRACE HOTELS LIMITED.....5TH DEFENDANT

RULING

On 23rd July, 2018 the court addressed an application dated 27th June, 2018 filed by the 1st defendant /applicant. That application sought among other orders that the suit against the 1st defendant abated on 7th February, 2017 and or that the plaintiffs' suit be dismissed for want of prosecution.

The court having been persuaded that the application had been served going by the affidavit of service, and that no reply had been lodged to oppose the application, and further that the averments in the supporting affidavit were an uncontroverted, proceeded to dismiss the plaintiff's suit with costs to the 1st defendant.

Thereafter, the 2nd and 3rd plaintiffs filed an application dated 15th October, 2018 to set aside the dismissal order aforesaid which application was listed for hearing on 30th October, 2018. When the application came up for hearing, the applicant was not present. Having confirmed that the date was taken by the applicant, that application was dismissed with costs.

On the same day that is 30th October, 2018 the 2nd and 3rd plaintiffs once again filed yet another application to set aside the dismissal of the application dated 15th October, 2018. That is the basis of this ruling. It was agreed that the ruling be based on the affidavit evidence on record.

I have taken some time to read the record herein. The multiplicity of applications herein may cloud the issues at the centre of this dispute. What I have noted however is that in the course of this dispute, parties submitted to arbitration proceedings and a judgment rendered accordingly.

That judgment of the arbitration process was adopted by the court and there is no evidence that it was ever set aside. That being the case, there appears to be no dispute that warrants the intervention of this court. If anything, the parties having been represented by counsel, should have been advised that only an appeal could keep the matter alive.

As it stands now, the applications on record may well be an abuse of the court process. I declare as I do, that I am not seized of any jurisdiction to continue entertaining the dispute before me. The end result is that this matter must now come to some sense of completion because, litigation must come to an end.

Going by the material before me, the order that commends itself is that the application dated 30th of October, 2018 is dismissed with costs to the respondents.

Dated, signed and delivered at Nairobi this 28th Day of March, 2019.

A. MBOGHOLI MSAGHA

JUDGE