



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL SUIT NO. 232 OF 2013**

**KELVIN MUMBA KAJIWE**

**SALIM KAJIWE WASHE.....PLAINTIFFS**

**VERSUS**

**SAID WASHE GURO**

**TRANSPARAES (KENYA) LIMITED.....DEFENDANTS**

**RULING**

1. This is the Notice of Motion dated 11<sup>th</sup> July, 2017. It is brought under Section 1A, 3A of the Civil Procedure Act, Chapter 21 Laws of Kenya, Order 17 Rule 2 (3), Order 51 Rule 1 and 3 of the Civil Procedure Rules 2010 and all enabling provisions of the Law.

2. It seeks orders;

1. That this Honourable Court be pleased to dismiss this suit for want of prosecution.

2. That costs of this application and/or the entire suit be borne by the Plaintiff/Respondent in any event.

3. The grounds are on the face of the application and are listed as paragraph a-k.

4. It is supported by affidavit of Abdulgani Abdulgaffur Pasta, a Director of the 2<sup>nd</sup> Defendant sworn on the 11<sup>th</sup> July, 2017.

5. The application is opposed. There is a replying affidavit sworn by Kelvin Mumba Kajiwe, the 1<sup>st</sup> Plaintiff sworn on the 2<sup>nd</sup> October, 2017.

6. I have considered the application, the supporting affidavit and the annexures. I have considered the replying affidavit and the submissions of both counsels.

7. I have considered paragraphs 12 and 13 of the replying affidavit of Kelvin Mumba Kajiwe, the 1<sup>st</sup> Plaintiff/Respondent.

8. I have seen annexure "KMJ -7". It confirms that he is a suspect in a murder case before the High Court. The bond and bail is dated 9<sup>th</sup> January, 2017.

9. I find that it is in the interest of justice that I give the 1<sup>st</sup> Plaintiff a chance to prosecute his case.

That upshot of the matter is that the 2<sup>nd</sup> Defendant's application fails.

The 1<sup>st</sup> Plaintiff is hereby directed to fix the matter to pretrial within the next forty five (45) days failure to which the suit shall stand dismissed.

The costs of the application be borne by the 1<sup>st</sup> Plaintiff.

**It is so ordered.**

**Dated, Signed and Delivered at *Mombasa* on the 23<sup>rd</sup> day of *November*, 2017.**

**L. KOMINGOI**

**JUDGE**

**23/11/2017**