



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 1239 OF 2005**

**IN THE MATTER OF THE ESTATE OF TIMOTHY KAMUNDE**

**MIIRU alias TIMOTHY KAMUNDE GITANGIRA (DECEASED)**

**RULING**

1. When the matter came up for hearing on 22<sup>nd</sup> September 2015, I was invited to dismiss the application, upon which the orders made on 24<sup>th</sup> September 2012 were premised, for want of prosecution, and to discharge the said orders.
2. The orders made on 24<sup>th</sup> September 2012 were to the effect that the application was certified urgent and prayer 2 thereof granted. It was to be served, and to be heard thereafter on 9<sup>th</sup> October 2012. Unfortunately, neither the court nor the advocate who addressed court on that day identified the application that was the subject of the proceedings.
3. The record indicates that an application was lodged at the registry on 24<sup>th</sup> September 2012. The same sought restraining orders against the Kenya Commercial Bank in relation to a property identified as Makuyu/Makuyu Block 1/3226. Should that be the application in respect of which the orders of 24<sup>th</sup> September 2012 were made, then the effect of granting prayer 2 was to give an interim order restraining the bank from dealing with Makuyu/Makuyu Block 1/3226 pending hearing and disposal of the said application.
4. The bank complains that since 24<sup>th</sup> September 2012 the applicant did not take any steps to prosecute the application. It is on that basis that the bank seeks the dismissal of the application and the discharge of the orders. There is an affidavit on record being proof that a mention notice had been served on the other parties.
5. I have carefully gone through the record. I am satisfied that no effort appears to have been made by the applicants in the application dated 24<sup>th</sup> September 2012 to have the application prosecuted. They are enjoying interim orders obtained *ex parte*. This would be contrary to the convention that such orders should last not more than fourteen (14) days.
6. As the applicants did not attend court on 22<sup>nd</sup> September 2015, and have not taken any steps since the filing of the application to have it listed for hearing, I am satisfied therefore that the application dated 24<sup>th</sup> September 2012 is ripe for dismissal for want of prosecution. Consequently, I do hereby dismiss the said application for want of prosecution. The orders made on 24<sup>th</sup> September 2012 are hereby discharged.

**DATED, SIGNED and DELIVERED at NAIROBI this 22<sup>ND</sup> DAY OF JULY, 2016.**

**W. MUSYOKA**

**JUDGE**