



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ELC. NO. 325 OF 2010**

**RUKIA RAPHAEL TOYA.....PLAINTIFF**

**- VERSUS -**

**STEPHEN WANGURA .....1ST DEFENDANT**

**KALOLO/KIBAONI/BAYA MAGONZI UPGRADING**

**PROJECT COMMITTEE..... 2ND DEFENDANT**

**ANDERSON PERU ..... 3RD DEFENDANT**

**RULING**

[1] The applicant brings this application to dismiss the plaintiff's suit for want of prosecution. He avers that the parties herein were ordered to exchange witness statements and documents within 45 days and the suit was set for hearing on 6th November 2012. That on that day the plaintiff and his advocate did not appear and the suit was stood over generally.

At the time of filing the suit on 11th March 2014 the plaintiff had not complied with the court order at all. The Plaintiff in reply annexed various letters to show that for sometime the court file was missing and stated that he is still interested in pursuing his case. He argued that dismissing the suit was draconian.

[2] Having heard the parties herein, I order that this application is dismissed with no order as to costs. The suit will be transferred to the Chief Magistrate's Court Mombasa for hearing and final disposal. The plaintiff must fix it down for hearing in that court within 45 days failing which this matter then shall stand dismissed with costs to the defendant.

**Dated and delivered at Mombasa in open court this 30th day of October, 2014.**

**S. MUKUNYA**

**JUDGE**

**30.10.2014**

In the presence of;

Mr. Nyange for Dr. Khaminwa Advocate for plaintiff/respondent

Mr. Lewa Advocate for the 1st defendant/applicant