



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & ADMIRALTY DIVISION**

**HIGH COURT CIVIL CASE NO. 336 OF 2010**

**GATONYE VICTOR KARIUKI .....1ST PLAINTIFF**

**VERSUS**

**JOHN GUTO.....1ST DEFENDANT**

**MOFFAT OMOGA ONCHIEKU.....2ND DEFENDANT**

**DAVID OENGA OINO.....3RD DEFENDANT**

**RICHARD KATOKA.....4TH DEFENDANT**

**RULING**

1. This court served a Notice to Show Cause why this suit should not be dismissed for want of prosecution. The Notice was served upon all the parties. The Plaintiff's advocate Mr. Samuel Aduda was served and he appeared in court on behalf of the Plaintiff on 9th May 2014 and sought the leave of court to file an affidavit in response thereto. Mr. Wachakana for the Interested Party also sought leave to respond to the said Notice to Show Cause.
2. While Mr. Aduda filed his client's affidavit in court on 16th May 2014, Mr. Wachakana's client, the Interested Party has been critically ill and has not been able to respond.
3. I have, however, considered the affidavit in response filed by the 1st Plaintiff. I am satisfied with the contents of the said affidavit, especially with the allegation that the delay herein has been caused by blatant disobedience of the court orders by some of the parties who will automatically gain if this suit is dismissed at this stage.
4. Pursuant to the above, I direct that this suit shall proceed to full hearing on its merits, and the parties should complete pre-trial directions. The matter will be mentioned on **31st October 2014** for further directions. Costs shall be in the cause.

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI**

**THIS 17TH DAY OF OCTOBER 2014**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

No appearance for Plaintiff

No appearance for Defendant

No appearance for Interested party

Irene – Court Clerk