



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**CIVIL CASE NO. 164 OF 2011**

**JEREMIAH MUSEMBI KIKUVI.....PLAINTIFF/  
RESPONDENT**

**=VERSUS=**

**1. ALI IBIDO YUSUF**

**2. MOHAMED BUTE GALGAL**

**3. THE DISTRICT LAND REGISTRAR  
LAMU.....DEFENDANTS/APPLICANTS**

**R U L I N G**

1. The Application before me is the one dated 4<sup>th</sup> May 2013. The Application is seeking for one substantive order, that the Plaintiff's suit herein against the Defendants be dismissed with costs for want of prosecution.
2. The Application is based on the grounds that the matter was last in court on 25<sup>th</sup> February 2012 when a Ruling was delivered, that a period of over one year has lapsed since the Plaintiff last listed the matter in court and that the continued pendency of the suit is prejudicial to the Defendants.
3. The Plaintiff/Respondent filed his Replying Affidavit on 10<sup>th</sup> June 2013 and deponed that immediately after this court delivered its Ruling on 25<sup>th</sup> February 2012, the Defendants approached the Plaintiff for settlement of the matter out of court but they could not agree.
4. The Plaintiff/Respondent has further deponed that his advocate attempted to have the suit fixed for hearing but when he visited the registry to have the file at the old law courts, the file could not be traced because it had been misplaced; that the separation of Environment and Land Court files with those of the High Court delayed the finding of the file further; that his advocate was informed recently that the file had been traced and the Defendants immediately filed the present application.
5. The Plaintiff finally deponed that the Defendants did not take any step to have the matter fixed for hearing, which they could not do because the file was missing and that he is ready to prosecute the suit and the officers of this court can testify in respect to the missing file.
6. I have taken judicial notice of the fact that when this court was established and the judges appointed in October 2012, there was confusion in respect of transferring files from the High Court registry to the Environment and Land Court registry.
7. Indeed, the situation was compounded by the fact that the old law court did not even have a registry for the new court due to the limited space. It was not uncommon to see files strewn all over the floor. Most files were misplaced or misfiled around that time.
8. I am therefore satisfied with the explanation given by the Plaintiff/Respondent for the delay in fixing this matter for prosecution since 28<sup>th</sup> February 2012 when Meoli J delivered her Ruling.
9. I therefore dismiss the Defendants'/Applicants' Application dated 4<sup>th</sup> May 2013. The costs shall be in the cause.

Dated and Delivered in Malindi this 31<sup>st</sup> day of July, 2013

**O. A. Angote**

**Judge**