



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ELC NO 900 OF 2007

EDWARD J MUIA

[Suing on his behalf & all members of

Kimathi ESTATE WELFARE ASSOCIATION.....PLAINTIFFS

VERSUS

NAIROBI CITY COUNCIL & 4 OTHERS.....DEFENDANTS

RULING:

The Plaintiff/Applicant herein, **Edward J Muia** has brought this Notice of Motion dated 21st May, 2013 seeking for several Orders. The applicant has sought for these Orders;

- (i) That an Order of stay to the taxation pending hearing.
- (ii) The Court to set aside the Judgement.
- (iii) Cost of the application.

The application was based on the grounds that the suit was dismissed on 21st May, 2006;

That the matter was listed for the hearing on 3rd May, 2013 of the taxation of a bill of cost by the 5th Defendant dated 14th December, 2012; that the applicants have instructed a new advocate to take over the matter; that the previous counsel did not notify the applicant nor keep him at abreast with what was going on.

The application was supported by the affidavit of **Edward J Muia** and annexures thereon. The application was opposed by the 5th Defendants **Simon Kirunga Ikenye** who put in his Replying Affidavit and further Affidavit. The parties herein canvassed the matter by way of Written Submissions.

I have carefully considered the Written Submissions and the pleadings herein. It is evident that the suit was dismissed on 20th December, 2006 for **want of prosecution**. Though the applicant alleges that he did not know of the said dismissal as his previous counsel of **J.I Kulo & Co. Advocates** did not inform him, there is no evidence whether the Plaintiff took any effort to find out what was happening to his (their) matter in Court.

I will concur with the submissions for the 5th Defendant/Applicant that litigation must come to an

end in one way or another. The suit was dismissed on 20th December, 2006. Plaintiffs has not taken any action to revival the suit. He only filed the instant application a day before the application for taxation was heard. That is indeed an abuse of the Court process.

The application is brought under **Section 1A, & 1B** of the Civil Procedure Act. The two sections deals with the overriding objective of the Act and the duty of the Court in ensuring expeditious disposal of Civil Disputes before the Court.

The instant application is meant to delay the final disposition of this matter and this is not in keeping in line with the overriding objective as envisaged by **Section 1A** of the Civil Procedure Act.

For the above reasons, the Court dismisses the applicant's application dated 2/5/2013 and Orders that, the 5th Defendant's application of the taxation of the Bill of Cost proceeds for hearing.

Application dated 2/5/2013 is dismissed with costs to the 5th Defendants herein.

It is so ordered.

Dated, Signed and delivered this 26TH day of July, 2013.

L N GACHERU

JUDGE

In the Presence of:-

.....**for the Applicant**

.....**for the Defendants**

Anne Court Clerk

L N GACHERU

JUDGE