



IN THE MATTER OF THE ESTATE OF MBUGUA NGANGA

(DECEASED)

RULING

This application is brought by a Notice of Motion dated 21st October, 2011 and taken out under **Order XVI Rules 5 (a), (c) and (d)**, and **Order L** of the **Civil Procedure Act**. It seeks orders that –

- 1. The Respondent's application dated 3rd of March, 2011 be dismissed for want of prosecution.***
- 2. The costs of this application be provided for.***

The application is supported by the annexed affidavit of Andrew

Njogu Gachoka, Advocate, and is based on the grounds that –

- (a) A period of six months has lapsed since the application was filed and no steps have been taken to fix the same for hearing.***
- (b) The delay is inordinate and inexcusable.***
- (c) It is in the wider interest of justice that the said orders are granted.***

At the hearing of the application, Mr. Gachoka for the Applicant

submitted that the Applicant was not opposed as the Respondent had not filed any replying affidavit.

On the other hand, Ms. Mburugu holding brief for Mr. Etemesi for the Respondent told the Court that her instructions were that the Respondent's Advocates are unable to get in touch with their client. Mr. Etemesi has since left "the Organisation" (i.e. the firm of Advocates for the Respondent, I presume) and the firm needs time to get in touch with their client.

In his reply, Mr. Gachoka argued that the same person who filed the application is the same one who is not available for service. His unavailability is just perpetuating a situation which blocks any movement forward. Counsel then submitted that the best solution was to strike out the application.

After considering the positions taken by the respective Counsel, I note that this application is brought under **Order XVI Rules 5 (a), (c) and (d)** and **Order L** of the old **Civil Procedure Rules**. Those **Rules** were revoked under **Order 54 Rule 1** of the new **Civil Procedure Rules, 2010**, which came into force on 17th December, 2010. That **Rule** simply stipulates that "the **Civil Procedure Rules** are revoked". Consequently, this application is brought under rules which are non-existent, and therefore the Court lacks the requisite jurisdiction to hear and determine the application.

Jurisdiction is everything, and without it, the Court lacks the power to deal with the matter before it. The application is accordingly struck out. However, since the Respondent did not react to the application,

there will be no order as to costs.

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this 26th day of April, 2012.

L. NJAGI
JUDGE