



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Environmental & Land Case 356 of 2010**

**HARUN GACHIE MAHIANYU .....PLAINTIFF/APPLICANT**

**VERSUS**

**THE GOOD SHEPHERD CHURCH KOMAROCK**

**NAIROBI (A BRANCH OF THE ANGLICAN CHURCH).....DEFENDANT**

**RULING**

The Plaintiff/Applicant herein Harun Gachie Mahianyu brought this suit to court on 26/7/2010. He further filed a chamber summons on the even date under Certificate of Urgency.

Interim orders were granted in respect of prayers (b) (c) & (d) and matter set for interpartes hearing on 5/8/2010.

I have perused the file and noted that from 5/8/2010, the chamber summons dated 26/7/2010 has never been heard due to several reasons. Interim orders have been extended severally. On 20/9/2012, the Defendant counsel herein invited the Plaintiff counsel, Mutitu Thiongo & Co. Advocates for fixing of hearing date on 2/10/2010. The letter of invitation was receipted in the office of Mutitu, Thiongo & Co. Advocates on 25/9/2012 as per the return of service filed in court on 19/11/2012.

From the court records, the applicant's representatives were not in court for fixing of hearing date.

The Defendant fixed the matter for hearing of application dated 26<sup>th</sup> July, 2010 on 19<sup>th</sup> November, 2012.

Further the Defendant/respondent served a hearing notice to the plaintiff/applicant advocates on 9/10/2012 as per the attached hearing notice on the return of service sworn by the process server one Stanley K. Kimani.

Today 19/11/2012, when the matter came up for hearing, the plaintiff/applicant and/or their counsels were not present in court. No reasons were given for their absence.

It is evident that a hearing notice was served on the firm of Mutitu, Thiongo & Co. Advocates on 9/10/2010.

The application herein was filed by the plaintiff/applicant herein and interim orders granted. Plaintiff/Applicant have not prosecuted the application since 26/10/2010.

Plaintiff might have lost interest in the suit.

The defendant counsel has shown interest in the matter as he has severally invited the plaintiff Counsel for fixing of hearing dates.

The defence has applied for the dismissal of the chamber summons dated 26/7/2010 with costs to the Defendant for want of prosecution. I will not hesitate to grant the Defendants prayer as it is very clear that plaintiff/applicant has not shown any eagerness in having this application dated 26/7/2010 disposed off.

Consequently the court allows the Defendant's prayer and dismiss the application dated 26/7/2010 with costs to the Defendants.

Dated, signed and delivered this 20<sup>th</sup> day of November, 2012

**L.N. GACHERU**  
**JUDGE**

In the Presence of:

.....for the Applicant

.....for the Defendants

.....Court Clerk