



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL SUIT NO.400 OF 1992**

**VIHIGA FARMERS CO. LTD. .... PLAINTIFF/RESPONDENT**

**V E R S U S**

**MUSA AZENGA ..... 1ST DEFENDANT**  
**PHILIP MUSASIA ..... 2ND DEFENDANT**  
**JETHRO MUTUKA ..... 3RD DEFENDANT**  
**SOLOMON OKOTO ..... 4TH DEFENDANT**  
**BOAZ LITIEMA ..... 5TH DEFENDANT**  
**WYCLIFFE MULAMA SABATIA ..... 6TH DEFENDANT**  
**JOSIA SITAKWA MWANI ..... 7TH DEFENDANT**  
**NATHAN INDOMBELO ICHECHI ..... 8TH DEFENDANT/APPLICANT**  
**ESTHER IRAGOSA BUSAKA ..... 9TH DEFENDANT**  
**BWONN ASIELE MIYA ..... 10TH DEFENDANT**  
**JEREMIAH LUMWACHI ASMAI ..... 11TH DEFENDANT**  
**ALPHONCE AWUONDA ..... 12TH DEFENDANT**  
**SIMON ALUMANDE ..... 13TH DEFENDANT**  
**BILISILA UNDEA IJAIKA ..... 14TH DEFENDANT**  
**JAMES ASIEMA..... 15TH DEFENDANT**  
**JAMES ALUSA ..... 16TH DEFENDANT**  
**JOYCE MIDEVA ANGALIKA ..... 17TH DEFENDANT**  
**DANIEL ISAGI ..... 18TH DEFENDANT**  
**JIMMY MATIA BANDI ..... 19TH DEFENDANT**  
**CHRISTOPHER SOME ..... 20TH DEFENDANT**  
**MICHAEL ANGALIKA ..... 21ST DEFENDANT**  
**TIMOTHY MAJANGA ..... 22ND DEFENDANT**  
**LUKA LUDENYO ..... 23RD DEFENDANT**  
**ELLY KAMADI OLOCHO ..... 24TH DEFENDANT**  
**LIVINGSTONE O. WASUSU ..... 25TH DEFENDANT**  
**JAVAN SAVATIA ..... 26TH DEFENDANT**  
**TIMOTHY INGOSI ..... 27TH DEFENDANT**  
**EZEKIEL JAKA ..... 28TH DEFENDANT**

**R U L I N G**

**1.** The Application dated 18.1.2010 is premised on the provisions of Order XVI Rule 5 and Order VI Rule 13(a) of the Civil Procedure Rules. In it, the 8th Defendant, Nathan Indombele Ichechi, seeks orders that the suit against him be dismissed with costs. In the alternative, that the suit be struck out with costs

for disclosing no reasonable cause of action.

2. In his Affidavit sworn on 18.1.2010, the Applicant depones that in the suit, the Plaintiff is challenging his registration as proprietor of land parcel no. **Lugari/Likuyani/178**. That his land parcel is not the same but it is land parcel no. **Lugari/Likuyani Block 1/Vihiga/178** and in any event, the Plaintiff has taken more than five years before taking any step to set down the suit for hearing and yet litigation must come to an end. A copy of the title for his parcel of land is annexed to his Affidavit and it is sought that the suit be dismissed for want of prosecution or for not disclosing a cause of action.

3. The plaintiff's response is set out in the grounds of opposition dated 7.2.2010 and they are as follows;

- (a) That the application is misconceived*
- (b) That a similar application, seeking same orders is pending*
- (c) The application has been served upon a firm not on record*
- (d) That this case was in court on 13.10.08 and pending application set for 18.1.2010*
- (e) That some of the defendants are dead, and some have been filing applications, one after the other*
- (f) That the averments in the supporting affidavit are false and meant to mislead this court.*
- (g) The application lacks merit."*

4. To my mind, the matter is simple; there is no response to the matters set out in the Application and the matters set out in the grounds of opposition are not an answer to the issue whether the Plaintiff has been indolent or not.

5. In any event, although the suit herein was filed on 16.12.1992, it has never proceeded to trial and the Plaintiff has chosen not to give reasons why that is the case. It filed the suit and must show what steps it has taken to have it finalized. It has chosen not to do so and must suffer the consequences of inaction.

6. Order XVI Rule 5 provides as follows;

*" 5 – If, within three months after-*

- (a) The close of leadings; or*
- (b) (Deleted by L.N. 36/00)*
- (c) the removal of the suit from the hearing list; or*
- (d) the adjournment of the suit generally, the plaintiff, or the court of its own motion on notice to the parties, does not set down the suit for hearing, the defendant may either set the suit down for hearing or apply for its dismissal."*

7. The suit herein was last listed for hearing on 13.12.2005 and although parties spent time on interlocutory matters over the years, no reason has been advocated why it could not go to trial and so the Application is merited with the consequence that the suit herein is struck off as against the 8th Defendant only. He shall be paid the costs thereof.

8. Orders accordingly.

*Delivered, dated and signed at Kakamega this 14<sup>th</sup> day of April, 2011*

**ISAAC LENAOLA**  
**J U D G E**