



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC NO. 2314 OF 2007

EDWARD N. KIRITU.....1ST PLAINTIFF
A. WAIGANJO.....2ND PLAINTIFF
S. KAMAU.....3RD DEFENDANT

VERSUS

PATRICK KIPTERER KIRUI.....1ST DEFENDANT
CITY COUNCIL OF NAIROBI.....2ND DEFENDANT
THE HON ATTORNEY GENERAL.....3RD DEFENANT
GOLF COURSE COTTAGES LTD.....4TH DEFENDANT

RULING

The plaintiffs brought this suit against the defendants over a dispute relating to a parcel of land known as Title No. Nairobi/Block 32/209 whereupon they claim permanent injunction orders against the 1st, 2nd and 4th defendants and also an order that the 2nd and 3rd defendants do revoke the title issued to the 1st defendant and to revert the same to the plaintiffs. The plaint dated 23rd November was filed on 27th November, 2007.

The record shows that on 20th December, 2007 interested party was enjoined in these proceedings and thereafter no action has been taken to facilitate the hearing of this suit. There are now two applications by way of Notice of Motion. The first of which is dated 10th and filed on 11th March, 2010 by the 1st and 4th defendants and the other dated 29th and filed on 30th November, 2010 by the 2nd defendants both of which seek to have the plaintiffs' suit dismissed for want of prosecution. The two applications have been brought under Order XVI Rule 5(d) and Order L Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The record is clear that, from the date this suit was stood over on 20th December, 2007 the plaintiffs have not taken any steps to facilitate its hearing. It is the defendant's case that they have suffered and continue to suffer prejudice due to the plaintiffs failure, refusal or neglect to set down this suit for hearing.

The plaintiffs were served with the two applications but did not file any replying affidavits. Both learned counsel for the defendants have filed written submissions. The plaintiffs having been served and having elected not to file any grounds of objection and /or replying affidavits, the averments made by the defendants are uncontroverted. It is clear from the plaintiffs' conduct that they have lost interest in the

suit and in any case, the cited rules are against them. I find that the two applications are well merited and should succeed. Accordingly, the plaintiff's suit herein is dismissed with costs of both the application and the suit to the defendants.

Orders accordingly.

Dated, signed, and delivered at Nairobi this 27th day of July, 2011.

A. MBOGHOLI MSAGHA
JUDGE