



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO. 107 OF 2006

JULIUS KILONZI KYUVU... .. PLAINTIFF/RESPONDENT

VERSUS

- 1. MAITHYA MASILA**
- 2. DOUGLAS KATUMO MWENDWA**
- 3. KITUI DISTRICT LAND REGISTRAR DEFENDANTS/APPLICANTS**

RULING

Before me is a Notice of Motion dated 5th October 2009 filed by the 1st and 2nd Defendants MAITHYA MASILA and DOUGLAS KATUMO MWENDWA. The application was filed under Order XVI Rule 5 (d) of the Civil Procedure Rules (Cap 21).

The prayers are as follows:-

- 1. THAT the Plaintiff's suit against the 1st and 2nd Defendants be dismissed for want of prosecution.**
- 2. THAT the costs of this application as well as for the main suit be awarded to the 1st and 2nd Defendants.**

The application has grounds on the face of the Notice of Motion. The grounds are that since the Plaintiff filed the suit on 27/10/2006 he has not taken any steps to set it down for hearing; that the Plaintiff be deemed to have lost interest in the suit; and that the pending suit has greatly prejudiced the Applicants.

The application was filed with a supporting affidavit sworn on 5th October 2009 by Douglas Katumo Mwendwa, one of the Applicants.

The application is opposed and grounds of opposition were filed on 27th April 2010. The major objection is that it has been difficult to get hearing dates in the registry because the diary has been full.

On the hearing date, only counsel for the Applicant Mr Mwalimu appeared in court. Counsel for the respondents, Mr Mutinda did not attend court.

Mr Mwalimu urged the court to dismiss the suit for want of prosecution. Having considered the

application, I am not inclined to dismiss the suit for want of prosecution because I have not been told that the Applicants themselves or their advocates have been prevented or obstructed by the Plaintiff from taking a hearing date. I will therefore not dismiss the suit for want of prosecution.

However, because the Plaintiff and his advocate did not even bother to come to court on the date for hearing the application, I will award costs of the application to the two applicants who are MAITHYA MASILA and DOUGLAS KATUMO MWENDWA.

Consequently, I dismiss the application. However, costs of the application will be paid by the Plaintiff.

Dated and delivered at Machakos this **6th** day of **December** 2011.

George Dulu
Judge

In presence of:-

For the Applicants: N/A

For the Respondent: Mr Njoroge holding brief for Mwalimu

Court clerk: Nyalo.