



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
MISCELLANEOUS CIVIL APPLICATION 50 OF 2003

REPUBLIC.....APPLICANT

VERSUS

KAPLAMAI L.D.T comprising of

1. ZABLON ASWENJE
2. RICHARD LEITICH
3. PATRICK JOHN OKIRU

SPM'S COURT KITALE.....2ND RESPONDENT

1. ENOCK BULIMO
2. JANE OSINDE ODANGA
3. STEPHEN WANJALA
4. AUGUSTINO WANJALA
5. RICHARD KISIA
6. CHARLES WAFULA
7. TIMOTHY PAULA

8. STEPHEN KHAYANGA & 5 OTHERS.....INTERESTED PARTY

RULING

On the 10th day of December, 2003 the honourable court issued a Notice to Show Cause under order XV1 Rule 2(1) why this suit should not be dismissed for want of prosecution.

The said notice was served on the 22nd day of December 2009 per the affidavit of Monica Njuguna filed herein.

When the Notice to Show Cause came up for hearing Mr M. Wafula, for the applicant urged me to spare the suit. The thrust of his argument is that he was served with the application on 22nd December 2009. He tried to contact his client in vain. Accordingly he could not respond to the application without the input of his client by way of evidence.

I have perused the court record and find as a fact that;

1. The application was filed on 11th June 2003.
2. Since then it has come up for hearing severally, to wit, 8.6.2004,10.11.04,18.1.04,18.1.05,2.3.05,10.5.05,6.6.05.

On 17th October, 2006 the court observed that;

“ I note that over 2 years on 8th June 2004 I observed that the ex-parte applicant herein was abusing the stay orders given to them by the court. Todate they have not served the application on Mr Kaosa as earlier on ordered by the court. They continue to abuse the stay order. This court should not assist the ex-parte applicant to continue disregarding court orders as he plays for time. In the result although I note that Mr Sayeni had just been instructed, I will give the orders I should have given 8 years ago. Those orders are to the effect that the stay orders granted herein pursuant to the leave of the court are hereby vacated. Let the ex-parte applicant now serve the application on Mr Kaosa within 7 days of today and take another hearing date from the Registry. The matter is S.O.G”

The demeanour of the applicant is well captured in the letter and spirit of the order hereinabove quoted.

Todate there is no cause shown to me why the application should not be dismissed. The applicant has been abusing the process of the court all along.

The application dated 10th June 2003 is dismissed with no orders as to costs.

Dated and delivered at Kitale this 1ST day of FEBRUARY 2010.

N.R.O. OMBIJA
JUDGE

Mr Wasike for J.M. Wafula