



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 133 of 2008**

MOWLID MOHAMED YUSUF.....1ST PLAINTIFF/RESPONDENT
ABEY NOOR BULLE.....2ND PLAINTIFF/RESPONDENT
MOHAMED M. DAHIR.....3RD PLAINTIFF/RESPONDENT
OMAR A. HASSAN.....4TH PLAINTIFF/RESPONDENT
AHMED DAUD SHEIKH.....5TH PLAINTIFF/RESPONDENT
MOHAMED SALAT D.6TH PLAINTIFF/RESPONDENT
AHMED DAULE HASSA.....7TH PLAINTIFF/RESPONDENT
JELLE MUDE G.8TH PLAINTIFF/RESPONDENT
ALI ADAN ABDULLAHI.....9TH PLAINTIFF/RESPONDENT
ALI AHMED MOHAMUD.....10TH PLAINTIFF/RESPONDENT
MOHAMMED NUR MAHAT.....11TH PLAINTIFF/RESPONDENT
HASSAN OSMAN SAMAN.....12TH PLAINTIFF/RESPONDENT
ALI I. ABDI.....13TH PLAINTIFF/RESPONDENT
MOHAMED D. ELMOGE.....14TH PLAINTIFF/RESPONDENT
ABDIKHEIR M. AGMADEGE.....15TH PLAINTIFF/RESPONDENT
MUYIHADIN MOHAMED ABDI.....16TH PLAINTIFF/RESPONDENT
IBRAHIM A. SHEIKH.....17TH PLAINTIFF/RESPONDENT
HUSSEIN H. BARROW.....18TH PLAINTIFF/RESPONDENT
YUSSUF N. HUSSEIN.....19TH PLAINTIFF/RESPONDENT
MOHAMED RASHID NOOR.....20TH PLAINTIFF/RESPONDENT
ABDIHAKIM H. GEDOW.....21ST PLAINTIFF/RESPONDENT
ADAN HUSSEIN HASSAN.....22ND PLAINTIFF/RESPONDENT
OSMAN ALIYE.....23RD PLAINTIFF/RESPONDENT
AHMED O. ABDI.....24TH PLAINTIFF/RESPONDENT
MUSA S. HUSSEIN.....25TH PLAINTIFF/RESPONDENT
NOOR A. MADEY.....26TH PLAINTIFF/RESPONDENT
HASSAN M. IBRAHIM.....27TH PLAINTIFF/RESPONDENT
IBRAHIM M. AHMED.....28TH PLAINTIFF/RESPONDENT
SIYAD M. ARALE.....29TH PLAINTIFF/RESPONDENT
MOHAMED S. ABDINOOR.....30TH PLAINTIFF/RESPONDENT
MOHAMED NOOR ABDI ISMAIL.....31ST PLAINTIFF/RESPONDENT
ABDIRAHMAN TAWANE ABDI.....32ND PLAINTIFF/RESPONDENT

VERSUS

**THE KENYA NATIONAL EXAMINATION
COUNCILDEFENDANT/APPLICANT**

RULING

1. By its Notice of Motion application dated 15/12/2009, the Defendant/Applicant prays that the Plaintiffs' suit be dismissed for want of prosecution. The Defendant also prays that the Plaintiffs be condemned with costs of this application and of the suit.
2. The application is based on grounds that since the close of pleadings the Plaintiff has never taken any step to set down this suit for hearing. The Defendant contends that the Plaintiff has lost interest in the case and the same should therefore be dismissed.
3. The application is also supported by the affidavit sworn by **Mary Wangui Kiarie**, an advocate of this honourable

court. The deponent avers that pleadings in this case have since closed following filing of the Defendant's defence on 22/07/2008. The deponent states further that the Plaintiffs have not exhibited any willingness to prosecute the suit which suit should now be dismissed with costs to the Defendant.

4. The application was duly served upon M/s Mugoye & Associates, advocates for the Plaintiffs on the 11/01/2010. Since then, the Plaintiffs have not filed either a Replying Affidavit or Statement of Grounds of Opposition to the Defendant's application.

5. The brief facts of this case are that the Plaintiffs commenced this suit by filing of the plaint dated 20/03/2008 on the 09/04/2008. Together with the plaint was the verifying affidavit sworn by Ahmed Daud Sheik and Mohammed Dahir, the 5th and 3rd Plaintiff's respectively. There is also the authority signed by the rest of the Plaintiffs authorizing Ahmed Daud Sheikh and Mohamed Dahir the 5th and 3rd Plaintiffs respectively to make such pleading as are necessary in respect of this suit.

6. The Defendant entered appearance on 05/05/2008 and filed defence on 22/07/2008. Until 18/12/2009 when this application was filed by the Defendant, the file had remained dormant, hence the Defendant's contention that this is a proper case for dismissal for want of prosecution.

7. This application is brought under Order 16 Rule 5 and Order 50 Rule 1 of the Civil Procedure Rules and also under section 3A of the Civil Procedure Act and all other enabling provisions of the law. The provisions of rule 5 of Order 16 of the Civil Procedure Rules are clear that if the Plaintiff fails to set down the suit for hearing after three (3) months from the close of pleadings, the Defendant has the option of either setting down the suit for hearing or applying for its dismissal. The duty of setting down the suit for hearing always remains that of the Plaintiff whether or not discovery has been undertaken.

8. In the instant case, the Plaintiffs have shown complete lack of interest in the case. The Plaintiffs did not even find it necessary to reply to the allegations contained in the Defendant's defence, nor did they find it necessary to defend this application.

9. The court finds that the Plaintiffs have been indolent. As this is also a court of equity, it will not assist the Plaintiffs because equity does not assist the indolent.

10. In the premises, the Defendants application dated 18/12/2009 must succeed. The same is therefore allowed. The Plaintiffs suit filed herein on 09/04/2008 be and is hereby dismissed with costs to the Defendant.

Orders accordingly.

Dated and delivered at Nairobi this 15th day of April, 2010.

R.N. SITATI

JUDGE

Read and delivered in the presence of:-

No appearance For the Plaintiffs/Respondent

Mr. Begi for Mrs. Kiarie (present) for the Defendant/Applicant

Catherine - court clerk