



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
Civil Case 588 of 2006**

**FELIX OCHIENG ..... 1<sup>ST</sup> PLAINTIFF  
SAMUEL CHONE MATANO ..... 2<sup>ND</sup> PLAINTIFF  
YUSUF K. ORLOOH ..... 3<sup>RD</sup> PLAINTIFF  
VERSUS**

**PAUL IMBADIKU CHABEDA ..... 1<sup>ST</sup> DEFENDANT**

**RUTH HARRIET CHABEDA ..... 2<sup>ND</sup> DEFENDANT**

**R U L I N G**

By this application, the Defendants seek an order that this suit be dismissed for want of prosecution.

The application is brought by a notice of motion dated 22<sup>nd</sup> December, 2009, pursuant to **Order XVI Rule 5 (d) of the Civil Procedure Rules and Section 3 A of the Civil Procedure Act**. It is supported by the annexed affidavit of Paul Imbandiku Chabeda, the 1<sup>st</sup> Defendant herein, and is based on the grounds that this suit was last in Court on 31<sup>st</sup> July, 2007, when a ruling was delivered by Hon. Justice Khamoni. Since that date, the Plaintiffs have not set the case down for hearing and have, instead, demonstrated a lack of interest in pursuing their claim. It is therefore in the interests of justice that the suit be dismissed as prayed.

The record shows that the Plaintiffs in this suit were served on 24<sup>th</sup> March, 2010, and that the application was coming up for hearing on 12<sup>th</sup> June, 2010. The Plaintiffs have filed neither a replying affidavit, nor grounds of opposition, and to crown it, they did not attend Court for the hearing of the application in spite of having been served in sufficient time to do so. This demonstrates a clear apathy towards this suit and the Plaintiffs appear to have lost any interest in prosecuting it.

For the foregoing reasons, the application is merited and this suit is accordingly dismissed with costs as prayed. The Plaintiffs will also bear the costs of this application.

Orders accordingly.

Dated and delivered at Nairobi this 1<sup>st</sup> day of July, 2010.

**L. NJAGI**

**JUDGE**