



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Environmental & Land Case 464, 2087 of 2007,2001**

**GEORGE RUMBO(Deceased) .....PLAINTIFF/RESPONDENT**

**V E R S U S**

**JONES GIBSON MWANGI .....DEFENDANT/APPLICANT**

**R U L I N G**

The Defendant is asking that the court dismisses the present suit for want of prosecution and to reconsider his application dated 9<sup>th</sup> October, 2008 and grant the prayers therein. The Plaintiff against whom the application is being brought passed away on 11<sup>th</sup> November, 2006.

The history of this case is that on 3<sup>rd</sup> December, 2001 the Plaintiff came to court by way of originating summons under **Order 36 rules 3, 3F and 5** of the **Civil Procedure Rules** seeking vacant possession of land number Nairobi/Block 76/810 which he had bought at a public auction and which the Defendant was interfering with. On 4<sup>th</sup> June, 2002 on basis that the Defendant had been served by advertisement in the DAILY NATION and had not entered appearance or filed defence, an *ex parte* judgment was entered. Execution duly followed. There have been various applications since, but the judgment and the consequential orders have not been set aside. The Plaintiff had this judgment in his favour when he died.

The present application is incompetent as it purports to be against a dead Plaintiff. Under **Order 23 rule 3(1)** of the **Civil Procedure Rules** such application can only be brought against the legal representative of the deceased Plaintiff. Whatever other proceedings the Defendant is contemplating in this matter can only be brought against such a legal representative. For the time being, the present application is struck out.

**DATED AND DELIVERED AT NAIROBI**

**THIS 12<sup>TH</sup> DAY OF OCTOBER 2010**

**A. O. MUCHELULE**

**J U D G E**