



Secondly, the *exparte* applicant was involved in a serious accident for which he was hospitalized and was undergoing treatment, thus the delay was not intentional. Lastly, there is a time when the matter appeared before **Ombija J** and the Judge directed that parties should negotiate an out of court settlement and record a consent, unfortunately, no consent has been forthcoming.

6. It is evident from the record, and it is also admitted by counsel for the *exparte* applicant that there was delay in taking steps to prosecute this matter. The explanation given that the delay was occasioned by certain factors such as gazette Notice No. 300 of January, 2007 which was subsequently lifted almost two years later in February, 2009. This application invokes the exercise of the court's discretion which is exercised in the interest of substantive justice. See the case **of Shah V Mbogo & another {1967}** **E.A Page. 116.**

7. Taking the totality of the matters raised in this application, it is in the interest of justice that the *exparte* applicant's case be sustained. It is common ground the applicant has been lethargic in prosecuting this matter for that reason I will give conditions that he should pay the cost of this application to the interested party assessed at Ksh. 10,000/= within two weeks. The *exparte* applicant should also fix the matter for hearing within two months failure to comply with any of the above conditions the order of stay issued on 27<sup>th</sup> November, 2007 will stand discharged.

Ruling read and signed this 12<sup>th</sup> day of November, 2010

MARTHA KOOME  
JUDGE