



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & TAX DIVISION**

**CIVIL CASE NO. MISC.578 OF 2007**

**NJAGI WANJIRU & CO.**

**ADVOCATES.....PLAINTIFF**

**VERSUS**

**THE CITY COUNCIL OF**

**NAIROBI.....DEFENDANT**

**RULING**

The applicant in the Notice of Motion dated 28<sup>th</sup> April 2010, prays that the Objector/Respondent's Reference dated 11<sup>th</sup> October 2007, be dismissed for want of prosecution and that costs of the Notice of Motion be borne by the Respondent.

The application is premised on the grounds that the objection has not been prosecuted and that no action has been taken in that regard since the same was adjourned on 5<sup>th</sup> December, 2007. Also that justice demands that the orders sought herein be granted to bring to an end the objector's unjust and unfair thwarting of the concretization of the certificate of taxation dated 17<sup>th</sup> July, 2007. In opposing the Notice of Motion the objector filed a Replying Affidavit sworn by its counsel on 28<sup>th</sup> May 2010, wherein it is deponed that failure to prosecute the objection proceedings by not relisting the same for hearing after the adjournment was due to inadvertence.

The facts, as stated in the Notice of Motion and supporting affidavit, are not disputed and are proved by the record. In paragraph 5 of the Replying Affidavit which is all that has been relied upon in opposing the application, the Objector admits that justice demands that matters before court should be determined expeditiously and without undue delay. Although stating that the delay on their part is not intentional, the

same is not explained in the Replying Affidavit. Counsel holding brief for the respondents' advocate did not attempt to explain the delay either.

It is trite that, to be excusable, inadvertence which causes the delay of proceedings must be reasonably explained to the satisfaction of the court. In the present case, it is not. The inadvertence referred to in the Replying Affidavit, given the facts as per the record is, in my view, more in the nature of indolence than an oversight. The applicant has been kept from enjoying the fruits of the Taxation ruled in his favour, by reason of the non prosecuted reference. Clearly, the maxim "**Justice delayed is justice denied**" applies in favour of the applicant.

I find that the application has merit, and is not sufficiently opposed. In the interests of justice the same is hereby allowed as prayed.

**DATED, SIGNED and DELIVERED at NAIROBI this 2<sup>ND</sup> day of DECEMBER, 2010**

**M.G. MUGO**

**JUDGE**

In the presence of :

Mr. Njage Wanjeru

For the Applicant

No appearance

For the Respondent