



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 110 of 2007

CHARLES KAMAU KIRUTHI & 5 OTHERS:.....1ST APPLICANT

DR.JOHN KIBUNGA KIMANI:.....2ND APPLICANT

HENRY MWASAMA WANYONYI:.....3RD APPLICANT

ESTHER WAMBUI KIMANI:.....4TH APPLICANT

DAVID MUTHAMI MUTHEE:.....5TH APPLICANT

MWANGI GIKUNGI:.....6TH APPLICANT

VERSUS

CAPITAL MARKETS AUTHORITY ;...1ST RESPONDENT

PETER GACHIGI THUO:.....2ND RESPONDENT

FRANCIS THUO & PARATNERS:.....3RD RESPONDENT

R U L I N G

The 2nd Defendant herein **PETER GACHIGI THUO** has taken out a Notice of Motion under Section 3A of the Civil Procedure Act and Order XVI Rule (d) and order L Rule 1 of the Civil Procedure Rules and any other enabling provisions of the Law praying that the plaintiffs' suit against him be dismissed for want of prosecution. It is on the basis that the suit has not been prosecuted since 08/03/2007 when it was last in court. It is supported by the affidavit of **KIMANDU GICHOHI** the advocate for the 2nd Defendant/Applicant who depones that the plaintiffs have not prosecuted the suit and the same should be dismissed to eliminate anxiety stress uncertainty uneasiness worry and tension that is said to be suffered by the Applicant.

The Application was opposed by the plaintiffs on the grounds that the suit had died a natural death by lapsing as no summons to enter appearance had been served and the Defendants had not filed a defence despite being aware of the existence of the suit. The Application was said to be lacking in merit and being an abuse of the process of the court which ought to be dismissed with costs.

I have perused the entire court file in considering this application. I find that the suit was filed on 28/02/2007 simultaneously with a Chamber Summons for, *inter alia*, an injunction. The chamber summons came up for hearing on 01/3/2007 when the same was withdrawn as being brought under the wrong provisions of the law and further that there were negotiations going on then. A chamber summons dated 02/03/07 by the plaintiff came up for hearing on the 2/3/07 and it was certified urgent and fixed for hearing on 08/03/07. On 08/03/07 the application was withdrawn on the grounds that the prayers sought had been overtaken by events. Nothing further happened until the present application under consideration was filed which when it came for hearing on 12/02/08 was adjourned at the behest of the plaintiffs who wished to file papers in reply.

There is no action whatsoever by the plaintiffs to mature this suit for hearing. As a matter of fact no summons to enter appearance have ever been issued. If ever there was a suit to dismiss this would be it. I do not understand the reason the application was opposed only for the opposer plaintiffs themselves to say that the suit had died a natural death. No single purpose is served by this suit remaining alive save to serve the negative purpose of filling our registry and increasing the list of pending cases. Except that I cannot grant orders not sought by parties not before court I would have had no difficulties and/or hesitations dismissing the entire suit. In the premises now the suit against the

2nd Defendant/Applicant is dismissed with costs.

Orders accordingly.

DATED AT ELDORET THIS 11TH DAY OF MAY, 2009.

P.M.MWILU

JUDGE

DELIVERED AT NAIROBI THIS 15TH DAY OF MAY, 2009.

J.W.LESIT

JUDGE

IN THE PRESENCE OF:-

.....Court clerk

.....Advocate for the Plaintiffs

.....Advocates for the 2nd Defendant

.....Advocate for the 1st Respondent