



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Civil Suit 180 of 2005**

**NASIR ALI ABDALLA .....PLAINTIFF**

**VERSUS**

**1. JAMES KANYOTU**

**2. MEENA PATEL .....DEFENDANTS**

**RULING**

The defendants herein took out a motion pursuant to section 3A and sought to have the summons dated 6<sup>th</sup> September 2005 to be dismissed for want of prosecution. The defendants also have asked this court to discharge the exparte orders of injunction given on 15<sup>th</sup> September 2005. The motion is supported by the affidavit of Meena Patel sworn on 18<sup>th</sup> January 2008. When served, the plaintiffs filed grounds of opposition to oppose the motion.

It is the argument of Mr. Muturi Gakuo, learned advocate for the defendants that the summons dated 6.9.2005 should be dismissed for want of prosecution, on the basis that the plaintiff's have not taken any steps to have the same prosecuted since 15<sup>th</sup> September 2005. This court was further asked to strike out grounds of opposition because they were filed in contravention of the provisions of order L rule 16 (1) of the Civil Procedure rules. Mr. Munyithya, learned advocate for the plaintiffs conceded to the fact that the grounds of opposition were not filed in time. He urged this court to excuse the plaintiffs and accept the grounds as properly filed out of time with leave of court. The learned advocate urged this court to reject the motion on the ground that the inherent jurisdiction of this court was improperly invoked.

I have considered the rival submissions. I have also perused the material placed before me. Let me start by dealing with the argument for the striking out of the grounds of opposition. The parties agree that the same were filed out of time without leave of court in contravention of order L 16 (1) of the Civil Procedure Rules. The plaintiffs have urged me to spare the grounds in the broad interest of justice. I am compelled to refuse to the spare the grounds because the plaintiffs' counsel did not tender any good reasons why the plaintiffs did not follow the rules yet there is evidence that he was served in time. I hereby strike out the grounds of opposition dated 11.03.2008 and treat the motion as argued exparte pursuant to the provision of order L rule 16 (3) of the Civil Procedure rules.

Let me now deal with the issues raised in the motion. The main complaint raised in the motion is that the plaintiffs have not taken any serious steps to have the summons dated 6.9.2005 fixed for interpartes hearing. This fact is not denied and the record confirms it. There is no specific provision in law which provides the dismissal of an application for want of provision. In such cases the law allows this court to exercise its inherent jurisdiction saved under S. 3A of the Civil Procedure Act to dismiss such applications.

In the end I find the motion dated 18<sup>th</sup> January 2008 as well founded. I allow the same as prayed by dismissing the summons dated 6<sup>th</sup> September 2005 for want of prosecution. It is obvious that the

consequential ex parte orders given on 15.9.2005 must go with the summons, hence the same are discharged. Costs of the motion is given to the defendants.

**Dated and delivered at Mombasa this 8<sup>th</sup> day of April 2008.**

**J.K. SERGON**

**J U D G E**

In open court in the presence of Mr. Kibaara h/b Gakuo.

N/A for Respondents.