



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 316 of 2004**

**ANGELINA N. KAMAU.....1<sup>ST</sup> APPELLANT**

**MUGANDA WASULWA**

**T/A KEYSIAN AUCTIONEERS.....2<sup>ND</sup> APPELLANT**

**VESUS**

**PURITY G. MUTHAMIA.....1<sup>ST</sup> RESPONDENT**

**HON. RICHARD MAOKA MAORE.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

The applicants, who are the appellants in this appeal, seek to have the chamber summons dated 23<sup>rd</sup> July, 2007 dismissed for want of prosecution. The chamber summons dated 23<sup>rd</sup> July, 2007 was an application brought by the respondents, seeking enlargement of time to enable the respondents file grounds of opposition to the applicants' application dated 14<sup>th</sup> December, 2004. The application also sought an order for review and setting aside of the orders made on 16<sup>th</sup> July, 2007. The orders of 16<sup>th</sup> July, 2007 struck out and expunged the respondents' grounds of opposition dated 16<sup>th</sup> July, 2007 and a replying affidavit sworn by Purity G. Muthamia on the 16<sup>th</sup> July, 2007.

On the 26<sup>th</sup> of July, 2007 the court directed that the chamber summons dated 23<sup>rd</sup> July, 2007 be disposed off before the appellants' chamber summons dated 14<sup>th</sup> December, 2004 is heard and disposed off. From that date, the respondents did not take any action to have the chamber summons dated 23<sup>rd</sup> July 2007 fixed for hearing. The appellant is now urging the court to exercise its inherent jurisdiction and dismiss the chamber summons dated 23<sup>rd</sup> July, 2007 for want of prosecution as it is being used by the respondent to prevent the hearing of the earlier application dated 14<sup>th</sup> December, 2004.

The respondent did not file any response to the application but urged the court to dismiss it contending that there was no time specified for prosecuting applications. It was further submitted that there was no law providing for dismissal of applications for want of prosecution.

Having considered this application and perused the entire court record, I find that the respondent has offered no explanation for their failure to prosecute the chamber summons dated 23<sup>rd</sup> July, 2007. In view of the court order that this chamber summons be disposed off before the appellant's chamber summons dated 14<sup>th</sup> December, 2004, the failure to prosecute the chamber summons dated 23<sup>rd</sup> July, 2007 is an abuse of the court process as it is blocking the applicants from prosecuting their chamber summons dated 14<sup>th</sup> December, 2004. Under Section 3A of the Civil Procedure Act the inherent jurisdiction of this court to make orders as may be necessary for the ends of justice or to prevent abuse of the process of the court is not limited by the absence of specific provisions in the Civil Procedure Act and Rules providing for the relief sought. In the circumstances it is necessary for this court to intervene and exercise its inherent powers to prevent the apparent abuse of the court process by dismissing the chamber summons dated 23<sup>rd</sup> July, 2007.

Accordingly the notice of motion dated 10<sup>th</sup> March, 2008 is hereby granted in terms of prayer 1. I further award costs of the notice of motion dated 10<sup>th</sup> March, 2008 and the application dated 23<sup>rd</sup> July, 2007 to the appellants.

**Dated and delivered this 22<sup>nd</sup> day of May, 2008**

**H. M. OKWENGU**

**JUDGE**