



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 117 of 2005

STEPHEN KAMUNGE WAINAINA..... 1ST PLAINTIFF

JOSEPH NJOROGE KIMANI 2ND PLAINTIFF

APULINA MWEMBA KIROMBO 3RD PLAINTIFF

VERSUS

PATRICK MULILI DEFENDANT

RULING

I: APPLICATION FOR DISMISSAL OF

SUIT FOR LACK OF PROSECUTION

DATED NOTICE OF MOTION 28.1.2008.

1. The three plaintiffs respondents herein filed suit on 4 February 2005. The three are alleged to be two “Scrupulous” businessmen and one officer of the Lands Department.
2. They are alleged to have grabbed unlawfully land that had been set aside for public use as a community centre.
3. The defendant Patrick Mulili was councilor at the time the suit was filed. In his defence he states that the land was set aside for public use. This defence was filed on 27 May 2005.
4. On 24 June 2005 the pleading was closed. Since February 2005 no action on this case was made. The applicant/defendant applies to have this suit dismissed.

Application 28 January 2008

5. The position of this suit is that plaintiff 1, 2 and 3 had been issued with an injunction orders till the finalization of the suit Mugo J (10 March 2005). Since the injunction was issued there was no steps taken to conclude this suit.

6. I note that this is a public interest case that should have been diligently protected. It has not. If the defendant applicant had not made this application then the court would have generally struck out and or

dismissed the suit under the three year rule, Suo moto.

7. The grounds of dismissal is that no steps were taken to finalize this matter. The 1 – 3 plaintiff were served through their advocates and are absent. (Order III Civil Procedure Rules on service upon advocates on record applies).

I hereby hold that this suit be dismissed with costs to the defendants for non prosecution.

DATED THIS 8TH DAY OF MAY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

E.K. Mutua instructed by E.K. Mutua & Co. Advocates for the defendant/applicant-present

M/s Gichigi Burugu instructed by Gichigi Burugu & Co. Advocates for the plaintiff/respondent – present