



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

**Civil Case 166 of 1994**

**STEPHEN MURIITHI GAKUYA**

**WAMURUANA NJOGU.....PLAINTIFFS**

**Versus**

**CHARLES WARUI KARANI**

**MUGA KIBUNGI**

**DANIEL KARANI NJAGAURA.....DEFENDANTS**

**RULING**

The Plaintiff filed the plaint herein on 30<sup>th</sup> March 1994. The Plaintiff simultaneously filed an interlocutory application seeking an order for inhibition and for injunction to stop the Defendants from transferring property *No. INOI/KAMOMONDO/665*. The court granted the Plaintiff the orders sought in the application on 28<sup>th</sup> June 1994. The court granted an order to the effect that the Defendant were prohibited by an order of inhibition from dealing with the aforestated property until the determination from of this suit. The Defendant's filed their defence on 7<sup>th</sup> November 1994. Thereafter the Plaintiff engaged the Defendant in various applications for committal to jail for contempt of court. The applications were between 1995 and 1999. Issues for determination were filed in this court on 5<sup>th</sup> October 1995. In the interim the 2<sup>nd</sup> Defendant died on 3<sup>rd</sup> May 2000. He was substituted by his wife. A hearing date was fixed by the Plaintiff for 22<sup>nd</sup> September 2005. On that day both counsels for the Plaintiff and Defendant were absent and the case was adjourned generally. The Plaintiff did not fix this case for hearing again and the Defendant filed the application which is the subject of this ruling. The application by way of Notice of motion is dated 25<sup>th</sup> April 2006. The orders sought therein are:

***“(a) That this suit be dismissed with costs for want of prosecution.***

***“(b) The prohibitory order/inhibition and/or caution registered against the title L.R.NO. INOI/KAMONDO/665 be lifted.”***

The application is supported by the ground that the Plaintiff has failed to prosecute this case. That further the aforestated property was registered in the name of the deceased 2<sup>nd</sup> Defendant and it is necessary to remove the prohibition to enable the wife of the deceased's 2<sup>nd</sup> Defendant deal with his estate as she deems fit. What does the Plaintiff say to those grounds. The Plaintiff filed a replying affidavit which was sworn by their present advocate. Julius Macharia Advocate deponed that he took over the conduct of this case from the firm of M/s A.J. Kariuki & Co. Advocate on September, 2006. He further deponed:-

***“That it is within my knowledge for the legal representation changing hands arose after A.J. Kariuki was engaged by the Ministry of co-operative Development as a Deputy Chairman of the Co-operative Tribunal way back in early 2003.”***

***“That I verily believe that the reason for the delay in fixing a hearing date was caused by the circumstances set out in paragraph 3 herein.”***

The deponent further stated that the Plaintiffs are desirous of prosecuting their case and that the court should bear in mind

***“that in recent years it has been very difficult to procure a hearing date without having to wait for a long time.”***

If indeed is to accept the argument raised by the Plaintiff the first question that begs an answer is what was the difficult experienced by the Plaintiff from 1994 to 2003 in obtaining a hearing date for this case. There is no explanation why the Plaintiff failed to fix the matter during that period. Even the explanation why the case did not proceed to hearing from 2003 is unacceptable to the court. The Plaintiff initiated this case obtained orders restraining the 2<sup>nd</sup> Defendant from dealing with land registered in his name in June 1994, the Plaintiff then had an obligation to ensure that the case was prosecuted with haste. As stated before there is only one date that the Plaintiff obtained for the hearing of this case. I believe it is apt to quote from the case ***OMARTRANXXOTORS LTD & ANOTHER- V- ASSA OKWEMBA ONYANGO CIVIL APP. NO. NAI 62 of 2002*** (unreported) where Omolo J.A. stated as follows:

***“legal business can no longer be handled in such a sloppy and careless manner. Some clients must learn at their cost that the consequences of careless and leisurely approach to work by the advocates must fall on their shoulders.”***

If it is true the Plaintiff’s counsel was too preoccupied to proceed with this case what did the Plaintiff’s themselves do to ensure this case proceeds. I am tempted to suggest that the Plaintiff having obtained an order of inhibition over the 2<sup>nd</sup> Defendant’s property they were quite happy to allow the case to subsist as long as it could. I find that the suit be dismissed. I grant the following orders:

- (1) That the prohibitory order inhibiting any dealings with land parcel No. INOI/KAMONDO/ 665 issued in this matter on 28<sup>th</sup> June 1994 is hereby discharged and lifted.***
- (2) That this suit is dismissed for want of prosecution with the costs of the suit being awarded to the Defendants.***
- (3) The costs of the Notice of Motion dated 25<sup>th</sup> April 2006 are awarded to the defendants.***

***Dated and delivered at Nyeri this 20<sup>th</sup> July 2007.***

**MARY KASANGO**

**JUDGE**