



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**Civil Case 220 of 1999**

STANLEY KIOKO NDUKU & 7 OTHERS ..... PLAINTIFFS

VERSUS

**THE TOWN CLERK MUNICIPAL COUNCIL OF MACHAKOS MUNICIPAL  
COUNCIL OF MACHAKOS ..... DEFENDANTS**

**RULING**

The application before the court is dated 24/7/2000, and was filed by the defendants. They seek that this suit be dismissed for want of prosecution. It is supported by an affidavit sworn by one Florence M Mwangangi, who is an advocate of the High Court who is in conduct of the case.

She simply swears that in this case which was filed in July 1999, no relevant step to bring it into a hearing, has ever been taken by the plaintiffs. She argues accordingly that the plaintiffs have, if they had any, lost interest in it for a period exceeding three months.

I have carefully perused the court record. The last relevant action taken in this suit was on 29/7/1999, when some temporary consent orders were recorded. In the original plaint the plaintiffs who were councilors of the defendant council, wanted a 2<sup>nd</sup> Annual Meeting of the Defendant Council to be held between 30/6/99 and 15/8/99. The plaintiff had averred that such a date would only be decided by councilors holding their council meeting. The plaintiff further averred that the defendants had usurped the Defendant Council's powers under the Local Governments Act to fix such a date. He sought that the defendant's act of selecting a date, was unlawful and should be nullified and that in the meantime an injunction would issue against the Defendants restraining them from proceeding with the scheduled meeting. The plaintiff also sought an order to compel the Defendants to cause a full meeting of the council to take place to choose a proper date for holding mid term elections of council seats like mayor's and the chairs of several departments.

It would therefore appear that the suit lost steam after the above political issues were resolved. Thereafter the plaintiffs have not taken any action on the matter over the years. The issues in the case are most likely exhausted or were resolved. There is no ground therefore to continue keeping the suit pending.

The plaintiff's advocate, Peter Mwanja Mbithi, agrees that no further steps have been taken but added that the issues in the case were resolved. They only seek costs since the interim orders made and which resolved the issue, were in their client's favour.

I have carefully perused the application. I am in agreement that no relevant steps have been taken in this case for a period longer than three months. The case should there be dismissed for want of prosecution. It is so ordered with no order as to costs in the main suit but costs of this application should be to the Defendants.

Dated and delivered at Machakos this 18<sup>th</sup> day of November, 2005

**D.A ONYANCHA**

**JUDGE**