



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**CIVIL CASE NO.541 OF 1993**

1. JONYO OGALO OMITI )  
2. ONYANGO OMITI )  
3. OKOTH OMITI ) ..... APPELLANTS  
4. OBONYO OMITI )  
5. AYAKO OMITI )

**VERSUS**

1. FLREIA OWANDE w/o OMITI (DECEASED )  
2. JOTHAM OUMA OMITI )  
3. ELIAKIM OGALO OMITI REP ) ..... RESPONDENT  
4. AJWANG w/o OMITI )

**RULING**

The applicants application dated 26th January 2005 seeks court to review and reverse its ruling of 28th September 2004.

The applicant was the second defendant in this suit filed in October 1993 by five plaintiffs namely: JONYO OGOLA OMITI; ONYANGO OMITI; OKOTH OMITI; OBONYO OMITI and AYOKO OITI seeking “the rectifications of the land parcels number Kamagambo/Kabuoro/881 and 797.”

By an application filed on 2nd February 2000 the defendants asked the court to dismiss the suit for Want of Prosecution. The court on 27th January 2001 found there was a delay of 7 years in prosecuting case and dismissed the suit. Court was silent on issue of costs and as such the defendant/applicant filed another application on 12th February 2001 asking court to condemn the plaintiffs to pay costs. This application was allowed.

On 30th January 2004 the applicant filed an application seeking one ELISAPHAN ODERO OMITI an Ass. Chief of Koderobara sub location to pay costs of the dismissed suit. On 28th September 2004 the court dismissed that application. It is that ruling the applicant now want reviewed and reversed.

In dismissing the application dated 30th January 2004 the court clearly gave its reason. Assistant Chief Elishaphan ODERO OMITI was not one of the plaintiffs who filed this suit. At no time did any

body make an application to have him enjoined as a party. Thus at the time of filing the application of 30th September 2004, the said Ass. Chief was not a party to this suit. That is why the court dismissed the applicants application as there are no provisions which can enable a court to condemn a person who is not a party to the suit to pay costs. The applicant can only pursue those who sued him to pay for costs or damages. The court has not now been told of any new developments which would make it review that ruling. There are no new facts or evidence which was not there when the court heard the application and dismissed it. The said assistant chief is still not a party to the suit. There is therefore no reason for this court to interfere with its ruling on 28th September 2004

In the circumstances the application is dismissed with costs.

Dated 17th May 2004

**KABURU BAUNI**

**JUDGE**

cc. Mobisa

Applicant present

N/A for Respondent.