

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL DIVISION

HIGH COURT CIVIL MISC. APPL. NO. 512 OF 2014

SIMON MAINA MUHORO.....APPELLANT/ RESPONDENT

VERSUS

EDWARD MUNGAI.....1ST RESPONDENT/ APPLICANT

PAUL MBURU MUHOHO.....2ND RESPONDENT/ APPLICANT

JOHN MUIGAI NJORA.....3RD RESPONDENT/ APPLICANT

RULING

1. The Notice of Motion dated 16th August, 2016 seeks orders that the application dated 23rd June 2014 be dismissed for want of prosecution.
2. It is stated that since the filing of the application dated 23rd June, 2014 which sought orders for stay of Execution and leave to appeal out of time, the Respondent has failed to prosecute the same and the decretal sum has been settled.
3. The application is opposed. It is stated in the replying affidavit that the decretal sum has been settled. That the notice of withdrawal of the application dated 23rd June, 2014 was prepared and executed but that due to the inadvertence of the advocate's clerk, the said notice was not filed.
4. During the hearing of the application, there was no appearance for the Respondent though served. The Applicant's counsel relied on the affidavit in support. I have considered both the application and the reply to the same. The Respondent has conceded that they are no longer interested in the application. Indeed if it was not for the inadvertence of the Respondent's Advocates clerk, the application in question would have been withdrawn way back in the year 2014. Since the Respondent had not taken any step in the matter, it is only fair that they meet the Applicant's costs.
5. The Application is allowed with costs to the Applicant.

Date, signed and delivered at Nairobi this 16th day of Feb., 2017

B. THURANIRA JADEN

JUDGE