

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

PETITION 36 OF 2011

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 40(1) (A) AND (B) OF THE KENYAN CONSTITUTION

AND

IN THE MATTER OF ARTICLES 22, 23, 159, 160 AND 165 OF THE CONSTITUTION

IN THE MATTER OF GENERAL TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

BETWEEN

FRANCIS NGIGI MACHARIA & 66 OTHERS

.....**PETITIONERS/RESPONDENTS**

VERSUS

NATIONAL

ENVIRONMENTAL

MANAGEMENT AUTHORITY.....
.....RESPONDENT/APPLICANT

RULING

1. The notice of motion dated **23rd** day of **October, 2013** is brought pursuant to the provisions of **Section 1A, 1B and 3A** of the **Civil Procedure Act, Order 17 Rules 2(1), (3)** of the **Civil Procedure Rules, 2010**.
2. In the application the applicant/respondent seeks an order dismissing the petition dated the **13th February 2012** for want of prosecution.
3. It is premised on grounds that it is over **one (1) year** since the petitioner or any other party has taken any step towards prosecution of the suit; and judging from the interlocutory ruling issued in this matter on the **15th May, 2012**, the petitioner has lost interest in the suit.
4. An affidavit in support of the application is deposed by **Erastus K. Gitonga** the advocate in conduct of the applicant's case who states *inter alia* that no action has been taken by the petitioner to set down the case for hearing. That the applicant has attempted to prompt the petitioner to set the matter down for hearing in vain and the presence of the petition serves to encumber the applicant with anxiety.
5. The application is unopposed.
6. It is trite law that a suit having been instituted must be heard. This is a case where upon institution of the suit the respondent sought issuance of injunctive orders that were declined. After the ruling was granted on the **15th May, 2012**, the petitioners took no step to have the matter heard. When a year lapses before a suit is heard any party may apply for its dismissal. The applicant having exercised that right, and the respondent/petitioner on being notified having failed to respond, this case must be dismissed and it is so ordered.
7. The applicants/respondents will have costs of the application and the petition.

DATED, SIGNED and DELIVERED at MACHAKOS this 12TH day of JUNE, 2014

L.N. MUTENDE

JUDGE