



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

Miscellaneous Application 78 of 2010

**FELIX NYONGESA MUTUNGUTIAPP
LICANT**

~VRS~

**THE LAND DISPUTES TRIBUNAL KANDUYI DIVISION.....1ST
RESPONDENT**

**THE CHIEF MAGISTRATE BUNGOMA.....2ND
RESPONDENT**

**THE ATTORNEY GENERAL.....3RD
RESPONDENT**

**NICHOLAS MAKHANU MUKHWANA..... 4TH
RESPONDENT**

RULING

What was fixed to be heard on 5/6/2012 was the preliminary objection dated 19/7/2010 by the 4th Respondent. The hearing notice was served on the *ex-parte* Applicant's advocates who did not attend. Mr. Makali for the 4th Respondent then sought that the motion dated 4/6/2010 be dismissed for want of prosecution. The motion sought the award of the 1st Respondent as adopted by the 2nd Respondent be removed into the court and quashed. The 4th Respondent had complained to the 1st Respondent regarding land parcel E. Bukusu/S.Kanduyi/685 (as subdivided into parcels E.Bukusu/S.Kanduyi/5734 – 5739) be re-subdivided. The decision had aggrieved the *ex-parte* Applicant, hence the application.

The motion was not the one fixed for hearing and therefore could not be dismissed for want of prosecution. Mr. Makali ought to have prosecuted the objection. The request to dismiss the motion for want of prosecution is consequently declined.

I ask Mr. Makali to take a date for the motion and to serve and during the hearing he can respond and at the same time raise the objection. Since the *ex-parte* Applicant did not attend, I make no orders as to costs.

Dated, signed and delivered at Bungoma this 11th day of July 2012

A.O. MUCHELULE
JUDGE