



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**Miscellaneous Application 724 of 2007**

**NDUNGU WARIUKI T/A WARIUKI  
COMPANY ADVOCATES.....APPLICANT**

**VERSUS**

**MUSA SIRMA.....RESPONDENT**

**RULING**

The Notice of Motion dated 13/10/2011 was filed by the defendant/applicant, Hon. Musa Sirma. He prays that there be a stay of proceedings in this suit (724/07) and 816/2011 in the Chief Magistrate's Court be stayed pending the hearing and determination of this application and further that the court do order that the taxation that gave rise to this matter be done afresh. The application was grounded on the affidavit of Samson Matoke Nyagaka, counsel for the applicant and grounds found in the body of the application.

When the application came up for hearing on 24/9/2012, Mr. Nyagaka sought an adjournment for reasons that his client wanted to negotiate as he had done in other matters between them. Mr. Karanja Mbugua, counsel for the plaintiff/respondent vehemently opposed the application. The court allowed the applicant time if indeed he was serious to settle and the matter was adjourned to 27/9/2012 for the parties to record settlement in default the application proceed to hearing. On 27/9/2012, Mr. Bosire held Mr. Nyagaka's brief and told the court that the applicant was engaged in the funeral of his late Permanent Secretary and did not have time to negotiate or give instructions. The court then directed that the matter do proceed to hearing. At that stage, Mr. Bosire changed tune and told the court that Mr. Nyagaka had no instructions and therefore required time to apply to cease acting. The court found that application mischievous. One minute, Mr. Nyagaka had instructions to negotiate and the next minute he lacked instructions in the matter. The court declined to allow an adjournment. Mr. Bosire had nothing to tell the court and Mr. Karanja then proceeded to ask the court to dismiss the application. The court declined to grant any further adjournment because of the manner in which the applicant has conducted himself. The application was brought under certificate of urgency on 13/10/2011 and was scheduled to be heard on 2/11/2011. On that date, Mr. Nyagaka, counsel for the applicant sought an adjournment to file a supplementary affidavit. The application was adjourned to 14/12/2011 but Mr. Nyagaka was not ready and it was alleged he was unwell. It was adjourned to 27/3/2012 when it was said Mr. Nyagaka was bereaved. It was adjourned to 13/6/2012 when Mr. Bosire said Mr. Nyagaka was indisposed. It was then adjourned to 24/9/2012. The numerous adjournments at the instance of the applicant and his counsel do demonstrate that they have not been keen to prosecute this application. For that reason, it is evident the applicant seems to be merely buying time and keen to delay the determination of both this matter and that in the lower court. Litigation must come to an end and I hereby dismiss the application dated 13/10/2011 with costs to the plaintiff/respondent.

**DATED and DELIVERED this 5<sup>th</sup> day of October, 2012.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Karanja Mbugua for the plaintiff/respondent

Mr. Nyagaka for the defendant/respondent

Kennedy – Court Clerk