



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Suit 473 of 2004**

**CALEB KOSITANY**

**SUING FOR AN ON BEHALF OF SIMON SAWE KOSITANY –DECEASED.....1<sup>ST</sup>  
PLAINTIFF**

**MESSRS KABOBO COMPANY LIMITED.....2<sup>ND</sup>  
PLAINTIFF**

**VERSUS**

**INDUSTRIAL & COMMERCIAL DEVELOPMENT  
CORPORATION.....1<sup>ST</sup>DEFENDANT**

**PETER BIRDS INVESTMENTS.....2<sup>ND</sup>  
DEFENDANT**

**RULING**

This application seeks the dismissal of this suit for want of prosecution. It is brought by way of a Notice of Motion dated 12<sup>th</sup> May, 2009, and taken out under Order XV1 Rule 5(d) of the Civil Procedure Act, and Section 3A of the Civil Procedure Act.

When the matter came for hearing on 11<sup>th</sup> November, 2010 Mr. Odongo appeared for the 1<sup>st</sup> Defendant/Applicant and Ms. Kitonga held brief for Mr. Gatuguta for the Plaintiff/Respondent. Ms. Kitonga told the court that Mr. Gatuguta was before another court in Divorce Cause No. 98/201, and that he had not been invited to take the hearing date. Mr. Odongo responded by saying that the Plaintiffs had not demonstrated any interest in the matter.

This suit was instituted in 2004. It last came to court on 15<sup>th</sup> October, 2004. Since then the Respondents have never set it down for hearing, this court takes the view that the Plaintiffs have amply demonstrated total apathy towards the prosecution of this case and have lost the interest to do so.

For the above reasons, this suit is hereby dismissed with costs for want of prosecution. The Plaintiffs will also pay the costs of this application.

**L. NJAGI  
JUDGE**

**DATED and DELIVERED at NAIROBI this 5<sup>th</sup> day of November, 2012**

**ODUNGA  
JUDGE**