



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CIVIL CASE NO. 913 OF 2015**

**URBAN PROPERTIES CONSTULTANTS**

**& DEVELOPERS LIMITED.....PLAINTIFF/RESPONDENT**

**=VERSUS=**

**MASTERMIND TOBACCO (K) LIMITED.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**TYSONS LIMITED.....DEFENDANT**

**JOSEPH KIARIE WETENGA T/A**

**FRONT BENT AUCTIONEERS.....DEFENDANT**

**RULING**

1. This is the notice of motion dated 7<sup>th</sup> October 2016 brought under Section 1A, 1B and 3A of the Civil Procedure Act, Order 5 rule 1(6) 2, rule 15(1) (b) (c) (d) of the Civil Procedure Rules and all other enabling provisions of the law.
2. It seeks orders:-
  - (1) *That the plaintiff's suit be and is hereby dismissed.*
  - (2) *That the costs of this application and of this suit be provided for.*
3. The grounds are on the face of the application and are set out in paragraphs 1 to 7.
4. The application is supported by the affidavit of Robert Mutuma, Company Secretary of the 1<sup>st</sup> defendant/applicant herein sworn on the 7<sup>th</sup> October 2016.
5. The application is opposed. There are grounds of opposition by the plaintiff dated 13<sup>th</sup> March 2017
6. On the 11<sup>th</sup> May 2017, the court directed that the application be canvassed by way of written submissions. It appears none of the parties filed submissions.
7. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the grounds of opposition. The issue for determination is whether the application is merited.
8. I have gone through the court record. The plaintiff/respondent obtained interim orders on 21<sup>st</sup> October 2015. To-date the orders are in force.
9. I have gone through the court record and I find that the plaintiff/respondent has never set down the suit for hearing. Upon being served with this application the plaintiff filed grounds of opposition. There is no explanation for the delay in setting down this suit for hearing.

10. The only logical conclusion is that it has lost interest in this case. In ground No. 2 of the grounds of opposition, the plaintiff/respondent claims it has been unable to fix the notice of motion dated 24<sup>th</sup> September 2015 owing to the congestion in the diary. There is nothing to confirm this. Someone ought to have sworn an affidavit to confirm the non-availability of dates.

11. In conclusion, I find merit in this application and the same is allowed. Accordingly the plaintiff's suit is hereby dismissed for want of prosecution with costs to the 1<sup>st</sup> defendant.

It is so ordered.

**Dated, signed and delivered in Nairobi on this 25<sup>TH</sup> day of JULY 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiff

No appearance for the Defendants

Kajuju - Court Assistant