



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 46 OF 1995**

STEPHEN MBONDO.....1<sup>ST</sup> PLAINTIFF

CHARLES M. MULL.....2<sup>ND</sup> PLAINTIFF

GEORGE K. CHELAGAT.....3<sup>RD</sup> PLAINTIFF

JOHN K. MWANDO.....4<sup>TH</sup> PLAINTIFF

DAVID NTARAGWI.....5<sup>TH</sup> PLAINTIFF

GABRIEL K. MUSYOKI.....6<sup>TH</sup> PLAINTIFF

**VERSUS**

THE HEADMASTER MLOLONGO PRIMARY.....1<sup>ST</sup> DEFENDANT

THE CHAIRMAN & COMMITTEE

MLOLONGO PRIMARY SCHOOL.....2<sup>ND</sup> DEFENDANT

**RULING**

1. In the Application dated 8<sup>th</sup> May, 2017, the Plaintiffs are seeking for the following orders:

***a. This Honourable Court be pleased to dismiss the Defendants/Respondents' Application dated 26<sup>th</sup> January, 2015 for want of prosecution.***

***b. Costs of this Application be borne by the Defendants/Respondents.***

2. The Application is premised on the grounds that the Defendants filed an Application dated 26<sup>th</sup> January, 2015 seeking for a stay of execution of the warrants of attachment of moveable property; that the Application was fixed for hearing on 4<sup>th</sup> May, 2015 and that since that day, the Defendants have not taken any steps to prosecute it.

3. In response, the Defendant stated that the Application was not heard on 4<sup>th</sup> May, 2015 because the court was not sitting; that subsequently, the file could not be traced for fixing of the Application and that the Plaintiffs are seeking to enforce an award after twenty (20) years from the date on which the cause of action arose.

4. The parties filed brief written submissions which I have considered.

5. The record shows that the Application dated 26<sup>th</sup> January, 2015 seeking for stay of execution of the warrant of attachment of the Respondents' moveable was fixed for hearing by the Deputy Registrar on 4<sup>th</sup> May, 2015. On the said date, the court was not sitting although the Applicants' advocate was in court.

6. The Deputy Registrar then fixed the matter for hearing on 29<sup>th</sup> June, 2015. The record does not indicate what happened on 29<sup>th</sup> June, 2015. The matter then went into a lull until when the current Application was filed.

7. The Defendant has deponed that his advocate was unable to trace the file for the purpose of fixing the said Application for hearing.
8. Indeed, I am aware that after the Court of Appeal delivered its decision in the case of *Karisa Chego & Another vs. R. Malindi Civil Appeal No. 44, 45 and 76 of 2014* on 8<sup>th</sup> May, 2015, the Judges of the High Court stopped hearing all the pending matters involving the Environment and Land. Machakos was one of the courts that remained without a Judge to handle Environment and Land matters after the said decisions.
9. In view of that, the Defendant cannot be blamed for not fixing the Application dated 26<sup>th</sup> January, 2015 for hearing between May, 2015 when the *Karisa Chego* decision was rendered and January, 2017 when a Judge was posted to the station.
10. In the circumstances, I shall give to the Defendants an opportunity to prosecute the Application dated 26<sup>th</sup> January, 2015.
11. For those reasons, I dismiss the Application dated 8<sup>th</sup> May, 2017 with no order as to costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2018.**

**O.A. ANGOTE**

**JUDGE**