



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**ENVIRONMENTAL & LAND DIVISION**  
**ELC CIVIL NO. 153 OF 2011**

**FEP HOLDINGS LIMITED.....PLAINTIFF**

**-VERSUS-**

**JOSSY PREPARATORY SCHOOL LTD.....1<sup>ST</sup> DEFENDANT**

**CHRISTOPHER WANJARIA KIMITI.....2<sup>ND</sup> DEFENDANT**

**RULING**

In response to a Notice to show cause why the suit herein should not be dismissed for want of prosecution under the provisions of Order 17 Rule 2 of the Civil Procedure Rules, Counsel for the Plaintiff has filed an affidavit detailing why for over a period of over two (2) years the suit herein has not been actively prosecuted. The affidavit it is to be noted has been filed by the law firm of Kinoti and Kibe Advocates. I have read through the affidavit. The suit herein sought to have the contracts of sale of various parcels of land vacated and avoided. The matter however proceeded to arbitration and an Award was made. That Award is the subject of challenge by the Plaintiff before this court in Misc. Civil Application No. 600 of 2014. If the challenge succeeds it will be probable that this suit will then be competently resurrected and prosecuted. I am satisfied that this suit could not have been prosecuted whilst the arbitral proceedings were on going, that is notwithstanding the fact that the arbitral forum was convened before this suit was filed and further that the Plaintiff never, for undisclosed reason, participated in the arbitral proceedings.

In short, the reasons advanced for the non-prosecution of this suit are tenable and acceptable. I will consequently dispense with the Notice to show cause and direct that this suit do await the determination of High Court Misc. Civil Application No. 600 of 2014. The Plaintiff will thereafter determine whether to proceed with the suit or not in the event the Award is set aside. It would only be proportionate if such an approach was adopted.

**Dated, signed and delivered at Nairobi this 22<sup>nd</sup> day of April, 2015.**

**J. L. ONGUTO**

**JUDGE**

**In the presence of:-**

..... for the Plaintiff/Applicant

..... for the Defendants/Respondent

