



Case Number:	Civil Suit 232 of 2013
Date Delivered:	23 Nov 2017
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	Ruling
Judge:	Loice Chepkemai Komingoi
Citation:	Kelvin Mumba Kajiwe & another v Said Washe Guro & another [2017] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	Mombasa
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application Dismissed.
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 232 OF 2013

KELVIN MUMBA KAJIWE

SALIM KAJIWE WASHE.....PLAINTIFFS

VERSUS

SAID WASHE GURO

TRANSPARAES (KENYA) LIMITED.....DEFENDANTS

RULING

1. This is the Notice of Motion dated 11th July, 2017. It is brought under Section 1A, 3A of the Civil Procedure Act, Chapter 21 Laws of Kenya, Order 17 Rule 2 (3), Order 51 Rule 1 and 3 of the Civil Procedure Rules 2010 and all enabling provisions of the Law.

2. It seeks orders;

1. That this Honourable Court be pleased to dismiss this suit for want of prosecution.

2. That costs of this application and/or the entire suit be borne by the Plaintiff/Respondent in any event.

3. The grounds are on the face of the application and are listed as paragraph a-k.

4. It is supported by affidavit of Abdulgani Abdulgaffur Pasta, a Director of the 2nd Defendant sworn on the 11th July, 2017.

5. The application is opposed. There is a replying affidavit sworn by Kelvin Mumba Kajiwe, the 1st Plaintiff sworn on the 2nd October, 2017.

6. I have considered the application, the supporting affidavit and the annexures. I have considered the replying affidavit and the submissions of both counsels.

7. I have considered paragraphs 12 and 13 of the replying affidavit of Kelvin Mumba Kajiwe, the 1st Plaintiff/Respondent.

8. I have seen annexure "KMJ -7". It confirms that he is a suspect in a murder case before the High Court. The bond and bail is dated 9th January, 2017.

9. I find that it is in the interest of justice that I give the 1st Plaintiff a chance to prosecute his case.

That upshot of the matter is that the 2nd Defendant's application fails.

The 1st Plaintiff is hereby directed to fix the matter to pretrial within the next forty five (45) days failure to which the suit shall stand dismissed.

The costs of the application be borne by the 1st Plaintiff.

It is so ordered.

Dated, Signed and Delivered at *Mombasa* on the 23rd day of *November*, 2017.

L. KOMINGOI

JUDGE

23/11/2017



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