



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 20 OF 2014

TITUS WAGENI MAINA.....1ST PLAINTIFF

ROSE WAMBUI KABUE.....2ND PLAINTIFF

- VERSUS -

CFC STANBIC BANK LIMITED.....1ST DEFENDANT

KEYSIAN AUCTIONEERS.....2ND DEFENDANT

DIANA KWAMBOKA ONTIRI.....3RD DEFENDANT

RULING

1. Notice of Motion application dated 21st October 2019 is filed by the 3rd defendant. The 3rd defendant seeks dismissal of this suit for want of prosecution.
2. The 3rd defendant supports that application by the following grounds.
 - “A. The suit herein was instituted by the plaintiffs/respondents against the 3rd Defendant/applicant in the year 2014.
 - B. This matter came up on the 17th April 2018 whereof the plaintiffs/respondents were granted leave to file further amended plaint within fourteen 14 days.
 - C. That the further amended plaint dated 19th April 2018 and filed in court on the 24th April 2018 was served upon the advocates on record for the 3rd defendant.
 - D. The 3rd defendant/applicant filed amended defence and counter claim to the further amended plaint on the 8th June 2018 and served the same on respective parties.”
3. The other defendants also supported the application by stating that there has been unexplained delay in concluding this matter, which delay the plaintiff has acknowledged.
4. The plaintiff confirmed, through the affidavit of the 1st plaintiff, that there has been delay in prosecuting this matter. No attempt was made to explain why there had been a delay.
5. Once a party brings a case before court it is its sole responsibility to ensure it is prosecuted without delay. The plaintiffs by failing to explain why, particularly since April 2018, they failed to proceed with this case denied this court the material upon which it can exercise its discretion. That will then lead me to look at the entire period since this suit was filed and find out if the plaintiffs are entitled to have discretion exercised in their favour.
6. The plaintiffs commenced this suit by a plaint filed in court on 21st January 2014. Plaintiffs application for injunction, to restrain defendants from entering upon, selling, offering for sale, altering, sub-dividing alienating, transferring their property LR 209/19594, was

dismissed by the Ruling of 11th March 2015. There was a lull with no activity at all in the case up and till March 2017 when the plaintiffs filed an application to amend the plaint. Orders to amend their plaint were issued on 17th April 2018. That was the last action by the plaintiffs until they were awoken from their slumber by the 3rd defendant by the present application.

7. From what I am able to gather from the pleadings and documents the 1st defendant in exercise of its statutory power of sale sold the plaintiffs' property by auction to the 3rd defendant. The plaintiffs are still in occupation of that property. Could that then explain why they are not in a hurry to conclude this case. It is indeed unfair for the plaintiff to keep the defendants in suspense by not concluding this case. I form the opinion that the plaintiffs be given a limited time within which to conclude the hearing of this case and failure to so conclude it shall stand as dismissed.

CONCLUSION

8. In the end in respect to the Notice of Motion dated 21st October 2019 I make the following orders:

(a) The plaintiffs shall conclude the hearing of their case by 31st July 2020. In default of concluding the hearing on that date this case will stand as dismissed for want of prosecution. If it is dismissed the costs of the suit will be borne by the plaintiffs.

(b) The plaintiffs will bear the costs of the Notice of Motion dated 21st October 2019.

(c) At the reading of this Ruling dates will be given to the parties for case management conference and for full hearing.

DATED, SIGNED and DELIVERED at NAIROBI this 30th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17th April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **30th** day of **April, 2020**.

MARY KASANGO

JUDGE