



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 557 OF 2011

PETER GICHUKIA MUTHERU.....PLAINTIFF/RESPONDENT

VERSUS

LILIAN WANJIKU MACHARIA.....1ST DEFENDANT/APPLICANT

NYONIA GIAKWA HOLDINGS LIMITED.....2ND DEFENDANT

RULING

1. The Notice of Motion before me and dated 15th September, 2017 has been brought by the 1st defendant/applicant in this instance. The same is supported by the grounds laid out on its body and the affidavit sworn by the applicant. The applicant is seeking an order for dismissal of the plaintiffs/respondent's suit for want of prosecution as well as costs of the application and suit.
2. In her affidavit, the applicant basically asserted that since filing the suit sometime in 2011, the respondent has not taken any active steps in having the same set down for hearing or otherwise prosecute the same, which essentially amounts to an abuse of the court process.
3. The application has not been opposed despite the respondent and 2nd defendant having been served with copies of the same. There is an affidavit of service to evidence this.
4. I have considered the grounds presented on the face of the Motion and the facts deponed to in the affidavit of the applicant.
5. It is well noted that this is an application seeking to have the suit dismissed. However, before I consider its merits, I wish to point out that upon perusing the plaint, I have observed that the subject matter of the dispute relates to the PLOT NUMBER 466 in LR NO. 8489/4 and that the reliefs being sought therein include a declaratory order that the respondent is the rightful owner of the abovementioned property and an order for rectification of the 2nd defendant's allocation register so that the original entry therein is reinstated.
6. It is evident from the above that the suit involves a land dispute. In that case, the law establishes a special court to handle disputes of such nature. *The Constitution, 2010* under *Article 162(2)* sets out the following:

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

...

(b) the environment and the use and occupation of, and title to, land.”

7. Pursuant to the above, the Environment and Land Court (ELC) was established to deal with issues relating to the environment and land. *The Environment and Land Court Act* which establishes the ELC stipulates the following under *Section 13*:

“(1)The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes?

(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.”

8. Going further, **Sub-section 7** of the aforesaid Section provides for the reliefs that may be granted by the ELC in the following manner;

“(a) interim or permanent preservation orders including injunctions;

(b) prerogative orders;

(c) award of damages;

(d) compensation;

(e) specific performance;

(g) restitution;

(h) declaration; or

(i) costs.”

9. From the foregoing, I am able to ascertain that the nature of the dispute and reliefs being sought in the respondent’s suit fall well within the purview of the ELC. In that case, I am satisfied that the present application is improperly before me and I have no basis on which to entertain the same or delve into its merits.

10. Consequently, I hereby order that the matter be transferred to the Environment and Land Court for further directions and the granting of appropriate orders.

Dated, signed and delivered at **NAIROBI** this 26th day of September, 2019

.....

L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff/Respondent

..... for the 1st Defendant/Applicant

..... for the 2nd Defendant