



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

ELC CASE NO. 135 OF 2013

DR. MULIANGA EKESA.....PLAINTIFF

VERSUS

TALITIA DISTRICT HEALTH HOSPITAL).....1ST DEFENDANT

FADDY MALABA).....2ND DEFENDANT

RULING

[1]. On 10/9/2013 by the consent of the parties to this suit, this case was stayed pending the determination of Petition No. 5 of 2013. This Suit and Petition No. 5 of 2013 both touch on Land Parcel Number West Bukusu/South Mateka/970.

[2]. Petition No. 5 of 2013 was struck out on 26/6/2014. Since this suit was held in obedience pending the hearing of Petition No. 5 of 2013 and which Petition was struck out. This suit was therefore fixed for Hearing on 5/10/2017. An appeal was preferred to the Court of appeal against the striking of Petition No. 5 of 2013 vide Eldoret Civil Appeal No. 266 of 2014.

[3]. On 16/2/2017 a Judgment was delivered by the court of appeal which vacated the order of dismissal of Petition 5 of 2013 aforesaid and issued an order for the said petition reinstatement.

The applicant has therefore brought this application asking that this suit be stayed pending the hearing and determination of the petition No. 5 of 2013.

[4]. The respondents objected and cited delay as a major reason. It was argued that there was no reason to wait for petition to be determined. Finally it was argued that the petition would not be determined any time soon. That although the original stay was by consent, the same lapsed after striking out of the petition. That a 2013 matter ought to be heard and determined by now.

[5]. There was a consent that this suit should be stayed pending the hearing of Petition No. 5 of 2013 on 10/9/2013. The petition was struck out by the Court. There was no option by the applicant, after the striking out other than fixing this suit for hearing.

Consequently, the striking out of the petition number 5 of 2013 was set aside by the Court of Appeal. The parties therefore reverted to the position they were at on 10/9/2013. The petition is now alive and is pending for hearing. Parties had by consent agreed that the hearing of the said Petition had a bearing on this suit. That position still persists.

The Application by the applicant is therefore merited. I allow the same as prayed.

Judgment read in Open Court before the Counsels.

Dated at Bungoma this 22nd day of November, 2017.

S. MUKUNYA

JUDGE.

In the presence of:

Hon. S. Mukunya - Judge

Madam Wakoli: For the defendant

Mr. Kundu for Bw' Onchiri for the Plaintiff