



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 489 OF 2010

JOANES OOKO AKUMU.....1ST PLAINTIFF

PHILISTER AOR OKUMU.....2ND PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....1ST DEFENDANT

IRENE W. KAMAU.....2ND DEFENDANT

AND

DUNCAN MAINA MWANGI.....INTERESTED PARTY

RULING

1. A pre-trial conference for this suit was held on 28/5/2015. On that day, Miss Omesa who was representing the 1st Defendant told the court that she was awaiting instructions from her Client.

Mr. Ogotu, representing the Plaintiffs, told the court that the Plaintiffs had fully complied with Order 11 of the Civil Procedure Rules except for filing the opposite case summary.

2. The parties were directed to fully comply with order 3, 7 and 11 of the Civil Procedure rules within 60 days of 27/34/2015. The case was fixed to be heard on 25/1/2016.

3. Mr. Bosire, for the Interested Party, told the court that he was ready to proceed. He also informed the court that his client, Duncan Maina Mwangi, was in court.

The names of the Plaintiffs were called out outside court. They were absent. The court clerk, outside the court, asked any representative of the 1st Defendant to identify himself/herself. There was no response.

4. Mr. Bosire complained that he had come all the way from Boston, USA, and said that he had spent a lot of money to ensure that he was in court to represent his client. he asked the court to dismiss the suit with costs to the Interested Party.

5. I note that today's hearing date was fixed almost eight months ago. I also note that this suit was filed over 5 years ago.

6. It is instructive that the Plaintiffs were not in court. The 2nd Defendant was not in court and the 1st

Defendant was not represented by an authorized officer in court. In essence, except for the Interested Party, the other parties were absent.

7. There is a public perception that the Judiciary is a veritable natural procrastinator of hearing and determination of cases. In many cases, however, Judicial Officers are placed in invidious positions. This is one such case. Except for the Interested Party, all the other parties are not in court.

8. As spelt out in direction 43 of the ELC Practice Directions contained in Gazette Notice No. 5178 of 28th July, 2014 non-compliance with relevant Civil Procedure Rules, Orders and/or directions issued by a Judge shall attract sanctions including but not limited to imposition of costs, fines, striking out pleadings and dismissal of suit, among others. The Plaintiffs and the Defendants should have come to court today for the hearing of this suit.

9. Order 12, Rule 1, allows the court to dismiss a suit if none of the parties are present. In this matter, however, the Interested Party was in court. Order 12 Rule 3 allows the court to dismiss the suit if only the Defendant is in court and he does not admit any part of the claim. I deem the Interested Party to be in the category of a Defendant. He does not admit any part of the claim. In the circumstances, this suit is dismissed.

10. I award costs to the Interested Party only.

It is so ordered.

Delivered in open court at Nairobi this 25th day of **January, 2016** in the presence of:-

Court clerk – Daniel

Kariuki holding brief Oguto for Plaintiff

Bosire for Interested Party

Omega for 1st Defendant

P.M. NJOROGE

JUDGE