



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL CASE NO. 147 OF 2002

KASSIM BABU.....1ST PLAINTIFF

SHAKILA ISMAEL KIBIBI2ND PLAINTIFF

VERSUS

1. AKRAM HASSAN ALI BABU

2. MUMIAS MUNICIPAL COUNCIL

3. REGISTRAR OF LANDS KAKAMEGA.....DEFENDANTS

RULING

[1] The application dated 23rd March 2016 came before Justice Kaniaru on 23rd March 2016 to prevent the 2nd defendant from carrying on a threatened eviction. The court declined to issue any restraining orders exparte. The judge ordered that the 2nd defendant be served and an interparte date be taken as a matter of urgency. The application was later fixed for hearing on 17/5/16. Madam Gloria Barasa advocate appeared for the applicant while M/s Omar appeared for the 2nd defendant. Ombito and Company were not present for the 1st defendant.

[2] Madam Barasa told the court that the defendants have evicted the plaintiff and the case had been overtaken by events. She however said that she needed to make an amendment. Mr. Omar had no objection. I ruled that this case has been in court for fourteen(14) years. The case was praying for a restraining order against the defendants from selling, disposing of and leasing South/Wanga/Lureko/575 pending the hearing and determination of Kakamega High Court Succession Cause No. 58/1989.

I gave the plaintiff seven(7) days to decide what she wanted to do since she said the suit was overtaken by events. We gave a mention date of 24/5/2016. On that day the plaintiff had done nothing. The 2nd defendant prayed to court that since the plaintiff had said the suit was overtaken by events that the suit be dismissed. Mr. Bw'onchiri who appeared for the plaintiff did not dispute that the suit had been overtaken by events. He only said that they had chosen to amend the suit. He argued that the court cannot dismiss the suit without a formal application further that the defendants have also occasioned the delay.

[3] There is no doubt that the plaintiff through his lawyer has said that this suit has been overtaken by events. There is therefore no need to adjourn the suit or keep it pending in the court registry in the hope that the plaintiff's lawyer will amend the same.

[4] The 2nd defendant on hearing that the suit is overtaken by events applied that the suit be dismissed. I think their prayer is justified since there is no need to keep the suit as a pending statistic in this court. It has been so pending for 14 years. The plaintiff applied for time to decide what to do and was given time upto 24/5/16. He did nothing. There is no application for amendment in this pending case.

[5] Under the circumstances therefore I allow the 2nd defendant's prayer. The suit is dismissed with no order as to costs.

Dated, signed and delivered at Bungoma this 27th day of July 2016

S.MUKUNYA – JUDGE

In the presence of

Gladys Court Assistant

Mr. Murunga h/b for Omar for the 2nd defendant/respondent

Mr. Makokha for Bw'onchiri for the applicant