



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL SUIT NO. 26 OF 2011(O.S)

CHARLES NTIRITU & 3 OTHERS.....PLAINTIFFS

VERSUS

STEPHEN ROBERT GITONGA.....DEFENDANT

R U L I N G

1. This matter came up for directions concerning an application filed by the defendant dated 3rd of March, 2014 . The application seeks the following orders: -

- (1) THAT this suit be dismissed for want of prosecution.***
- (2) THAT the injunction order made on 23rd February, 2012 be vacated and / or set aside.***
- (3) THAT the costs of this application and the suit be awarded to the Defendant.***

2. The Application is supported by the Affidavit of PAUL THUITA KIIRU and has the following grounds:-

- (1) THAT it has been over a year since the matter was set down for hearing.***
- (2) THAT since the matter came up for a ruling on an application for an injunction by the respondents on 23rd February, 2012, the respondents have made no effort to prosecute this matter, a position which reflects their lack of interest , making this matter a futile task.***
- (3) THAT it is unconscionable for the Applicant to suffer indefinitely from an imminent prosecution towards which the Respondents have refused and/or neglected to take any action.***
- (4) THAT the Applicant is unduly prejudiced by the abeyance of this matter.***
- (5) THAT it is in the interest of justice that this order be given so that justice can be served.***

3. Mr. Njenga, holding brief for Mr. Kiiru for the Defendant, told the Court that neither the Plaintiff nor his Advocate were in Court despite the fact that service had been properly made upon the plaintiff's Advocate. He explained that the Defendant had filed an Affidavit of Service.

4. Mr. Njenga lamented that the Plaintiffs were not willing to have the suit heard and determined expeditiously since they were enjoying orders granted to them in February 2012. He said that these orders were being enjoyed by the Plaintiffs even though this was not allowed by Order 40 Rule 6 of the Civil Procedure Rules. He asked the Court to grant the orders sought as the Plaintiffs had been indolent.

5. Mr. Njenga told the Court that the Defendant's application had not been opposed since its filing in March, 2014.

6. I agree with the Defendant's Counsel that the Plaintiffs have not been diligent in the prosecution of their case. Even though the Plaintiff's application dated 25th February, 2011 was heard and determined and Injunctive Orders granted by the Hon Justice J.A Makau, J, on 23rd February, 2013, the defendants have not moved to have their suit heard and determined expeditiously.

7. The orders granted by the Court, though granted pending hearing and determination of the suit are subject to provisions of Written Law. Order 40 Rule 6 of the Civil Procedure Rules stipulates as follows:-

“ Order 40 Rule 6: where a suit in respect of which an interlocutory Injunction has been granted is not determined within a period of twelve months from the date of the grant, the Injunction shall lapse unless for any sufficient reason the Court orders otherwise”.

8. The Injunctive Orders granted in this suit lapsed in 2013. No sufficient reason was proffered to Court for extension of the orders. Three years down the line, the Plaintiffs are enjoying the said Injunctive Orders. I declare that they have lapsed by operation of the law and this Court has no choice but to vacate them.

9. In the Interest of Justice, I decline to dismiss the suit for Want of Prosecution. I issue the following Orders:-

(1) This application is deemed heard and determined.

(2) The suit is not dismissed.

(3) The Injunctive Order granted on 23rd February, 2013 is set aside and vacated.

(4) The Plaintiffs should fully comply with Order 11, CPR, within 45 days of today.

(5) The defendant should fully comply with Order 11, CPR, within 45 days after being served with the Plaintiffs' compliance documents.

(6) Should the Plaintiffs not comply with Order 11, CPR, within the stipulated time, the defendant should nevertheless go ahead and comply and then obtain a date for directions from the Registry.

(7) Upon achievement of compliance, parties to obtain a convenient date for directions from the Registry and in case of default by any of the parties, the other one or the others may obtain a date for directions from the registry.

10. Costs shall be in the cause.

11. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 20TH DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF :-

CA: Daniel/James

Parties not in Court

P.M. NJOROGE

JUDGE