



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

ELC NO. 156 OF 2012

**GEDION M'IKUNYUA (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE
OF JOYCE GATWIRI M'IKUNYUA).....1ST PLAINTIFF**

JANET NKIROTE IKUNYUA.....2ND PLAINTIFF

VERSUS

JAPHET KITHINJI MUGUNA.....DEFENDANT

RULING

1. This application is dated 1st December, 2013. It is predicated upon Order 17 Rule 2, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. It seeks Orders;

1. That this suit be dismissed for want of prosecution.

2. That the costs of this application as well as the costs of the suit be awarded to the defendant/applicant.

2. The application is supported by the affidavit of Japhet Kithinji Muguna and has the following grounds;

1. That the Plaintiffs are culpable of inordinate and inexcusable delay in prosecuting the matter herein.

2. That since inception/filing of the case herein in the year 2012, neither the plaintiff nor the court of its own motion has ever taken any broad steps to set the suit down for hearing.

3. That it is now over 3 years since the matter was filed and or registered in court, which period is far beyond the one year period required by law for the suit to be dismissed for want of prosecution.

4. It is apparent that the plaintiff has lost interest in prosecuting this suit and the same ought to be dismissed for want of prosecution in the interest of justice.

5. It is cardinal principle of Law that litigation must come to an end and the continued pendency of the suit in court without being prosecuted not only prejudices the Defendant but it is also an abuse of the court process.

3. The Supporting Affidavit of Japhet Kithinji Muguna sworn on 1st December, 2015 states as follows;

I, Joseph Kithinji Muguna of P O box 1846 Meru within the Republic of Kenya do hereby make oath and state as follows;

- 1. That I am an adult person of sound mind and the defendant/applicant herein hence competent to make and swear this affidavit.**
- 2. That I am well seized with facts herein deponed.**
- 3. That on 16th December, 2005 I celebrated a marriage with one Joyce Gatwiri G Muriungi now deceased at Katheri Methodist Church under the African Christian Marriage and Divorce Act Act Cap 151 Laws of Kenya (annexed and marked "JKM1" is a copy of the marriage Certificate).**
- 4. That on 29th October, 2014 I was issued with letters of administration in respect to the deceased estate vide Meru High Court Succession Cause No. 206 of 2012.**
- 5. That prior to the said marriage the deceased and I cohabited as husband and wife in our matrimonial home situated at Katheri for all intents and purposes.**
- 6. That the deceased left the following properties.**
 - (a) Land Parcel No. 4805 ATHINGA/ATHANYA ADJUDICATION SECTION.
 - (b) Land Parcel no. 3797 KINJAI ADJUDICATION SECTION.
- 7. That during our marriage we jointly developed both parcels of land.**
- 8. That we put up rental house in parcel No. 4805 Athinga/Ithanya adjudication Section which we have leased to several tenants.**
- 9. That before the deceased died we used to collect rent from the rooms constructed in plot no. 4805, but after my wife's death her sister one Salome started collecting rent and would not remit the same to me.**
- 10. That on 4th April, 2012 the plaintiffs through the firm of M/S Elijah K. Ogoti & CO Advocates filed Tigania PMCC No 51 of 2012 against me, seeking injunctive orders in respect to land parcel no. 4805 Athinga/Athanja and 3797 Kianjai Adjudication section herein referred (annexed herewith find a copy of the plaint dated 3rd April, 2012 and marked "JKM2").**
- 11. That Tigania PMCC No. 51 of 2012, was transferred to Meru High Court and registered as Meru High Court E & L Civil case no. 156 of 2012.**
- 12. That it is now over three (3) years since the time this suit was registered in Meru High Court and the plaintiff had not taken any steps in prosecuting the same.**
- 13. That it is apparent that the plaintiffs' have lost interest in this matter.**
- 14. That it is cardinal principle of law that litigation must come to an end in the interest of justice to both parties.**
- 15. That the pendency of this suit in court without being prosecuted is an abuse of the court process and I urge this court to exercise it's discretion to curtail further abuse by dismissing the suit with costs to me.**
- 16. That the plaintiffs are capable of in ordinate and in excusable delay in prosecuting their case.**

17. That this honourable court has jurisdiction to grant the orders sought in this application.

18. That what is deponed herein is true to the best of my knowledge, information and belief unless otherwise stated.

4. The application came before court on 8th November, 2011 when advocate D J Mbaya, for the defendant/applicant, told the court that the plaintiff's advocate was properly served with the apposite date when the parties were required to be in court for directions. He lamented that this suit was filed way back in 2012 and since then the plaintiff's had taken no steps to prosecute their case. He , therefore, sought dismissal of the suit in terms of the provisions of Order 17 of the Civil Procedure Rules.

5. I find that this application has merit.

6. This suit is dismissed.

7. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 23RD DAY OF NOVEMBER, 2016 IN THE PRESENCE OF:-

C.A: James

Mutura h/b D.J Mbaya for the Defendant.

P. M. NJOROGE

JUDGE