



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 536 OF 2011

J. H. PRODUCTIONS LTD.....APPELLANT

VERSUS

MARY KATANU KAMEME.....1ST RESPONDENT

PURITY KAMANA M. MUTURI.....2ND RESPONDENT

MEGHJI LAJI.....3RD RESPONDENT

SALUMU PRODUCTS AND ENTERPRISES LTD.....4TH RESPONDENT

SAMBAI MEGHJI HALAI5TH RESPONDENT

RULING

1. The subject matter of this ruling is the motion dated 11.10.2012 taken out by Mary Katanu Kameme, the 1st Respondent herein, in which she sought for inter alia that this appeal be dismissed for want of prosecution. The Applicant filed an affidavit she swore in support of the motion.

2. When served, J.H. Productions Ltd., the Appellant herein, filed the replying affidavit of John Ngugi to oppose the motion. When the motion came up for interpartes hearing this court directed the motion to be disposed of by written submission.

3. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support and against the Application. I have also considered the rival written submissions. Before considering the merits or otherwise of the motion it is appropriate at this stage to outline the history behind this dispute. In the year 2011 the 1st Respondent together with 45 members of the Embakasi Quality Self Help Group filed a suit contemporaneously with an application for injunction against the Appellant the 3rd, 4th and 5th Respondents before the Chief Magistrate's court, Milimani.

4. The trial court heard the application for injunction and on 27.9.2011, the court granted the order for injunction to restrain the Appellant, the 3rd, 4th and 5th Respondents from interfering with the quiet enjoyment and use of plot numbers 1-75 being subdivisions of LR. Nos.9042/140, 9042/141 and 9042/137. Being aggrieved the Appellant preferred this appeal to impugn the injunctive orders. The Appellant successfully applied for an order for stay of the orders of injunction pending appeal.

5. It is the submission of the 1st Respondent that the Appellant has since obtaining the order for stay of execution on 6th June 2012 has taken no steps to have the appeal prosecuted. The 1st Respondent has

argued that the pendency of the appeal and the orders are prejudicial to her hence the appeal should be dismissed for want of prosecution.

6. The 1st Respondent further pointed out that the Appellant has merely on two occasions written to be supplied with certified copies of the proceedings but has not taken any concrete steps to secure the same and to prepare and file the record of appeal. For this reason this court was urged to return a finding that the appellant has lost interest to pursue the appeal and that it is guilty of inordinate delay in prosecuting the appeal since it is enjoying the stay orders.

7. The Appellant on the other hand has urged this court to dismiss the motion claiming that it has been extremely difficult to obtain certified copies of the proceedings from the National Environment Tribunal whose decision is being challenged on appeal. In response to this argument, the 1st Respondent filed a supplementary affidavit alleging that the Appellant was in fact supplied with a copy of the proceedings hence the Appellant is not candid.

8. The main question this court must settle is whether or not this appeal should be dismissed for want of prosecution. What is not in dispute is that there has been a long delay in having this appeal heard and determined. The Appellant has offered an explanation for the delay. Basically, the Appellant has stated that it has not obtained the certified copies of the proceedings to enable it prepare the record of appeal. The Appellant has exhibited correspondences it made to apply to be supplied with certified copies of typed proceedings.

9. It is submitted that the proceedings were not ready until the month of April 2014 and that upon receipt, the appellant took steps to have the record of appeal prepared.

10. After a careful consideration of the rival arguments, I am convinced that the Appellant has given a plausible explanation for the delay. There is no evidence to show that the Appellant was hell bent to delay the conclusion of the appeal.

11. In the end, I find no merit in the motion dated 11.10.2013. The same is dismissed. Costs shall abide the outcome of the appeal.

Dated, Signed and Delivered in open court this 20th day of December 2016.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent