



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
CIVIL SUIT NO. 226 OF 2010

GLADYS WAKIO MURIUKI.....PLAINTIFF/RESPONDENT

VERSUS

EQUITY BANK LIMITED.....1ST DEFENDANT/RESPONDENT

ROBERT MAINA T/A

PETER GITONGA WANGAI.....2ND DEFENDANT/RESPONDENT

CITIGATE DEVELOPERS LIMITED.....3RD DEFENDANT/APPLICANT

RULING

INTRODUCTION

1. Before the Court is a **Notice of Motion** dated **23rd February 2015** and filed in Court on 25th February 2015 by the Third Defendant. The motion seeks as the main order that the suit herein be dismissed for want of prosecution with costs to the 3rd defendant.
2. The application is premised on the grounds set out therein and is supported by an affidavit by **NJAMA WAMBUGU** dated **23rd February 2015** and filed in court on 25th February 2015.
3. The Plaintiff has not responded to the application despite being served as per the affidavit of service filed in Court on 23rd March 2015.
4. The 1st and 2nd Defendants are, however not opposed to the application and do in fact support the same.

THE APPLICANT'S CASE

5. The brief history of the application is that the Plaintiff herein filed a suit against the 1st Defendant and 2nd Defendant on 14th April 2010 and simultaneously filed an Application on even date seeking for an injunction on the dealings of property tile Number "**RUIRU/KIU BLOCK 3/49**" the suit property. The court granted the Plaintiff ex-parte orders of temporary injunction restraining the Defendants from dealing in any manner with the suit property. The Plaintiff failed to prosecute her interlocutory application aforesaid and the suit generally and enjoyed the protection of the said Ex-parte orders for a period in excess 3 years to the prejudice and disadvantage of the 3rd Defendant. The suit property had been sold through an auction to the 3rd Defendant and in the circumstances the 3rd Defendant was enjoined to the proceedings by way of the order of court made on the 30th May 2013. Further the 3rd Defendant made an application filed on 3rd September seeking that the said Ex-parte order be set aside and discharged. By a

ruling made by this Court on 11th July 2014 the ex-parte orders were set aside with costs to the 3rd Defendant. Thereafter the Plaintiff ceased to give instructions to her lawyers who consequently ceased acting for her on 10th March 2014. The Applicant states that the foregoing is clear that the Plaintiff has since 14th April 2010 not taken any steps to set down the main suit for hearing and it is evident that the Plaintiff has not been keen on prosecuting this matter and it is in the interest of justice that the case be dismissed for want of prosecution.

ANALYSIS AND DISPOSITION

6. The application before the court is not opposed by either the Plaintiff (who has not responded to the same) or by the 1st and 2nd Defendant (who actually support it). However, this court must still enquire into the merits of the said application. It is true that the Plaintiff in this matter filed the suit herein in the year 2010 and simultaneously secured temporary injunctive orders against the sale/or transfer of the suit property, which had been sole to the 3rd Defendant. The Plaintiff never took any further interest in the matter and while enjoying the said injunctive orders, failed to set the matter for hearing. Vide an application by the 3rd Defendant to set aside the said injunctive orders, this court on 11th July 2014 set aside the said ex-parte injunctive orders. Now, the same 3rd Defendant has come to court for the dismissal of the entire suit.
7. In my view, the failure by the Plaintiff to prosecute this suit is inordinate and inexcusable. The pendency of this case is prejudicial to the 3rd Defendant's profile and business, and the Plaintiff appears not bothered. This is a perfect case in which this court can exercise its discretion and dismiss a suit for want of prosecution which I hereby do.
8. In the upshot, the Notice of Motion application dated 23rd February 2015 and filed in Court on 25th February 2015 by the 3rd Defendant is hereby allowed.
9. The costs of the application and of the suit shall be for the 3rd Defendant.

Orders accordingly.

DATED, READ AND DELIVERED AT NAIROBI

THIS 30TH DAY OF APRIL 2015

E. K. O. OGOLA

JUDGE

PRESENT:

No appearance for the Plaintiff

M/s Areri holding brief for Wekesa for the 1st and 2nd Defendant

Mr. Mwendwa holding brief for Njenga for the 3rd Defendant

Teresia – Court Clerk