



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
ENVIRONMENT & LAND CASE NO.6 OF 2014

EDWARD WAFULA WAFUBWA.....PLAINTIFF

VERSUS

MOSES NYONGESA MURESIA.....1ST DEFENDANT

GEORGE MURESIA.....2ND DEFENDANT

LAND REGISTRAR BUNGOMA.....3RD DEFENDANT

RULING

The applicant brings this notice of motion praying that the suit filed on 9th January 2014 be dismissed for want of prosecution. The applicant argues that it is over one year since the suit was filed and no step has been taken to have the suit fixed for hearing. That the plaintiff has clearly demonstrated lack of interest in this suit.

The respondent in his reply in Court through his Counsel Mr. Wamalwa, pleaded to be given time to serve the 2nd defendant herein. Mr. Wamalwa said that they have looked for the second defendant and have not found him.

In reply Mr. Onyando learned Counsel for the applicant argued that the pleadings have closed. That no cause has been shown as to why there is no service. That there has been no application for extension of summons. That the said summons have expired after the expiry of one year since they were issued. He argued the Court to dismiss the case.

I have carefully considered the application by the defendant applicant. I have also considered the reply by the respondent plaintiff.

There is no doubt that since the plaint was filed, there has been no service to the 2nd defendant at all. This fact has been admitted by the Plaintiff.

Order 5(6) of the Civil Procedure Rules provides

“Every summons, except where the Court is to effect service, shall be collected for service within 30 days of issue or notification, whichever is later, failing which the suit shall abate”

2.(1)

The validity of the summons in this case has expired. There has been no application to extend the same

made in Court.

There is no prove at all that the 3rd defendant has been served at all.

I am afraid there has been an unexplained delay in service of summons, in this case, there has equally been unactivity on the part of the plaintiff for a period of over one year.

I am not convinced that the plaintiff is still interested in this suit.

I dismiss the suit and order that each party bears its own costs.

Dated at BUNGOMA this.....23RDday of.....JULY.....2015

S. MUKUNYA

JUDGE