



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 732 OF 2012

JOSEPH MWATHI RUTHI.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED.....1ST DEFENDANT

SUSAN WANJIKU GATHUMBI (Sued as the widow and administrator

of the Estate of JOSEPH GATHUMBI WAWERU).....2ND DEFENDANT

RULING

1. The **Notice of Motion** dated **9th September, 2015** seeks for orders that the Plaintiff's suit be dismissed with costs for want of prosecution and that the costs of the application be borne by the Plaintiff. It was filed pursuant to Order 17 Rule 2 (3) of the Civil Procedure Rules, 2010 and was predicated on the grounds set forth on the face of the Notice of Motion and well as the averments of Daniel Kimani Kanyagia in the Supporting Affidavit sworn on 9th September, 2015. Those grounds can be summarized as hereunder:
 - a. That no step has been taken by the Plaintiff to prosecute the suit for a period exceeding one year.
 - b. That the continued pendency of this suit when no active steps are being taken to prosecute it is prejudicial to the 1st Defendant.
 - c. That it is in the interests of justice that the matter be dismissed for want of prosecution as the Plaintiff has apparently lost interest in it.
2. Having perused the Notice of Motion, the Supporting Affidavit and the annexures thereto and considered these in the light of the pleadings and proceedings to date, it is the case that the Plaintiff's suit was filed on 22nd November, 2012 for a Permanent Injunction and declaratory orders in respect of the impending sale by the 1st Defendant of **Property No Gatamaiyu/Kamburu/2027**.
3. The Defendants filed their Defence on 25th January, 2013 and since no Reply thereto was filed, pleadings closed on or about 25th February, 2013. The record shows that no action has been taken thereafter by the Plaintiff with a view of prosecuting this suit.
4. It is also noteworthy that although the application was duly served, it remains entirely unopposed in that no Replying Affidavit was filed nor any effort made to attend the hearing. Under Order 17

Rule 2 (3) Civil Procedure Rule any party to a suit may apply for its dismissal where no application has been made or action taken by either party for a period of one year.

5. In the premises, the application dated 9th September, 2015 is meritorious. The same is hereby allowed and orders granted as prayed therein with result that this suit is hereby dismissed with costs for want of prosecution and that the costs of the application be borne by the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF NOVEMBER 2015

OLGA SEWE

JUDGE