

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ENVIRONMENT AND LAND CASE NO. 329 OF 2009 (OS)

MARY MWALLA KISASA & 6 OTHERS.....PLAINTIFFS

- V E R S U S -

GAPCO (K) LIMITED.....DEFENDANT

RULING

[1] The applicant brings this application to dismiss the suit filed herein for want of prosecution among other reasons stated on the motion dated 4th June 2014.

[2] The applicants main reasons for the application is that the delay in fixing this case for hearing has been inordinate. The applicant argues that the last time this case came up for hearing was on 28th May 2010. That a delay of 4½ years is very inordinate more so in a suit where injunctive orders were granted. The respondent in answering this compliant have stated that, directions were not given by the Deputy Registrar that any party to a suit can set the suit down for hearing and that the defendant has contributed to the delay. The plaintiff must take responsibility of fixing his case for hearing. He cannot sit back and expect the defendant to do so for him.

[3] In Century Oil Trading Company Limited v Gerald Mwaniki Mbogo and another [2004] eKLR the Court said it is the duty of the plaintiff to get on with the case also see, ELC NO. 78 of 2009(OS) Zephania Gichure Ndungu v Rwaikaniba Rwathia Trading Co. Ltd., Sabastian Muimu Kangatta v Capital Markets Authority 2014 eKLR.

I think a four and half year of inaction is inordinate delay. The plaintiff has sat back and enjoyed the injunctive orders granted by the court on 18th September 2009. There is no justification for this delay. It has not been satisfactorily explained. I agree with the applicant that the delay is inordinate and the suit should be dismissed. I dismiss it with no order as to costs. Having dismissed on that score I need not address myself on all the other issues raised by the parties.

Dated and delivered in open court at Mombasa this 30th day of October 2014.

S. MUKUNYA

JUDGE

30.10.2014

In the presence of:

Bosire advocate for the plaintiff

Nyange advocate for Isaac Onyango for the defendant