

REPUBLIC OF KENYA

High Court at Malindi

Civil Suit 110 of 2011

FADHILI ABDALLAPLAINTIFF

VERSUS

BASHELALLALI SHEKALE SHELALI

CINQUE EMIC LIMITED

COMMISSIONER OF LANDS.....DEFENDANTS

RULING

This matter was coming up for hearing at the instance of the 2nd defended who is in court. The date for hearing was fixed by Ms. Chebet, the 2nd defendant's representative on 6th December, 2012. she served the plaintiff with a hearing notice for today on 7th December, 2012 and the 1st defendant on 10th December, 2012. The 3rd Defendant was served with the hearing notice on 11th December, 2012. On 25th June, 2012, Hon. Justice Meoli directed the 2nd Defendant to invite the parties in this matter with a view of taking a hearing date and if the parties fail to attend for fixing of the date, the registry to fix the matter for hearing on 6th October, 2012. It was however not until 18th May, 2012 that the 2nd Defendant fixed this matter for hearing for 6th December, 2012 but the two were not in court. The court directed the 2nd Defendant to take another date in the registry and serve all the parties with a fresh hearing notice. The 2nd defendant fixed the matter for hearing again for 7th February 2013 and served the hearing notices on the plaintiff, the 1st and 3rd defendants as per the filed affidavits of service. When this matter was called out today, the Plaintiff, 1st Defendant and 3rd Defendant were not in court. No explanation was given for the absence of the parties in court. The 2nd Defendant has filed her list of documents and she has indicated that she was ready to proceed with the hearing of the main suit. The Plaintiff seems not to be interested in the suit thus his absence in court today. The current dispensation does not allow the court to show the same indulgence towards the conduct of a litigant who is not interested in his claim as was perhaps possible in a more leisured age. There will be cases, like in the instant one, in which justice will be served by allowing the consequences of the litigant who is not interested in his claim to fall on his own head. In the circumstances I dismiss the Plaintiff's suit for want of prosecution with costs to the 2nd Defendant.

Read and delivered in Malindi on this **7th** day of **February, 2013**.

A. O. Angote

JUDGE