



REPUBLIC OF KENYA



KENYA LAW
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**Limutti Holdings Limited v Charo & 11 others (Environment & Land
Case 121 of 2018) [2025] KEELC 3227 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3227 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 121 OF 2018**

FM NJOROGE, J

APRIL 8, 2025

BETWEEN

LIMUTTI HOLDINGS LIMITED PLAINTIFF

AND

KAHINDI CHARO 1ST DEFENDANT

JACKSON KALACHU 2ND DEFENDANT

MWANASOMO SAID 3RD DEFENDANT

KILIFI PLANTATIONS LIMITED 4TH DEFENDANT

THE DIRECTOR OF SURVEY 5TH DEFENDANT

LILLIAN MARY MUTTIMOS 6TH DEFENDANT

JOSEPH BENEAH MUTIMOS 7TH DEFENDANT

ROSEMARY NG'ONGA 8TH DEFENDANT

NARAN KUNVERJI 9TH DEFENDANT

HARISHCHANDRA RAVJI GAJIPRIA 10TH DEFENDANT

THE REGISTRAR OF LANDS, MOMBASA 11TH DEFENDANT

THE ATTORNEY GENERAL 12TH DEFENDANT

RULING

1. On 26/2/2025, Mr. Ojwang, State Counsel appearing for the 5th, 11th and 12th Defendants, made an oral application urging the court to dismiss the Plaintiff's suit under the Provisions of Order 17 Rule 6. According to him, the Plaintiff's case has been dormant for a period exceeding 2 years and, in such



circumstances, an applicant need not file a formal application for dismissal. According to him, it is only under Order 17 Rule 2 that an application must be filed. He narrated that the record on CTS reveals that the suit has been dormant for two years after which period, Mr. Lughanje acted by serving parties with a mention notice dated 26/3/2024. Mr. Ojwang asserted that action was not by the Plaintiff's. Counsel also pointed out that the Plaintiff, *vide* a ruling delivered on 22/3/2022, survived another application for dismissal.

2. Mr. Ole Kina, counsel for the 1st -4th Defendants told the court that Mr. Ojwang's application was similar to their application dated 26/8/2024. He urged that should Mr. Ojwang's application be allowed, he be granted leave to prosecute their counter-claim.
3. Mr. Omollo, on record for the Plaintiff argued that there is no proper application for dismissal before court. He added that the suit has been active before court and that the 4th Defendant even filed a counterclaim. He submitted that a case cannot be dismissed in instalments. That if the original Plaintiff should suffer the blame for inaction, then the Plaintiffs in the counterclaim should equally be found guilty of inaction. To him, the entire suit, including the counter-claim should thus be dismissed if the court is to be fair.

Determination.

4. I need to first point out that Mr. Ojwang's reliance on Order 17 rule 6 of the *Civil Procedure Rules* in this case is in error and it should be Order 17 Rule 2 (6); secondly the said Order 17 Rule 2 Sub-rule 6 reads that 'a party may apply to court after dismissal of a suit under this Order', which has nothing to do with Mr. Ojwang's application. The suitable provision is Order 17 rule 2 Sub-rule 5, which provides that a suit stands dismissed after two years where no step has been undertaken. The effect of this provision is that where there is no activity in a suit after a period of two years, the suit automatically stood dismissed for want of prosecution, by operation of the law.
5. On 24/3/2022, a ruling was delivered on a similar application dated 7/9/2021. The court dismissed the application and directed – "Parties to comply with Order 11 within 30 days and fix the case for hearing." Thereafter, no activity was initiated by either party until on 22/2/2024 when the Plaintiff's former advocate fixed at the registry, a date for pre-trial on 23/4/2024. The matter was again mentioned on 15/5/2024, where it was established that the Defendants had filed an amended defence and counter-claim. The court then fixed a date for pretrial on 8/7/2024, which was rescheduled to 9/10/2024. By this time, the 1st-4th Defendants had filed an application dated 26/8/2024 seeking amongst other orders that the Court dismisses the suit against the Defendants. The suit was subsequently mentioned on 22/1/2025 when the court ordered that the application dated 26/8/2024 be served and directions on the hearing of the suit to be issued on 26/2/2025. It was on this latter date when Mr. Ojwang presented his oral application to dismiss the suit for being dormant for a period exceeding 2 years.
6. Looking at the activities preceding the present oral application, and the provisions of Order 17 rule 2 (5), I am not convinced that the Plaintiff's suit should be dismissed at this stage. When one looks back 2 years from the date of the present application, this suit has not been dormant during that period as suggested by Mr. Ojwang. For avoidance of doubt, I decline Mr. Ojwang's oral application made on 26/2/2025. I also hereby order that this suit shall be mentioned on 28/5/2025 for directions.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 8TH DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

