



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. 429 OF 2000

HANNAH WANJIRU WANGANGA.....PLAINTIFF
VERSUS
IBRAHIM CHEGE NDUTI & 5 OTHERS.....DEFENDANTS

R U L I N G

1. This is an application (**notice of motion dated 14th March 2011**) by the Defendants seeking an order for dismissal of the Plaintiff's suit for want of prosecution. The application is brought under **Order 17, Rule 2** of the **Civil Procedure Rules, 2010** (the **Rules**).
2. The grounds for the application appearing on the face thereof are –
 - (i) That the Plaintiff has “taken more than one year to make any appearance since the last position of the case was on 28th January 2005 ... basically six years down the line”.
 - (ii) That the Plaintiff “has been reluctant and has not shown any form of seriousness in proceeding with her case”.

These grounds could have been more elegantly crafted!

3. There is a supporting affidavit sworn by the 1st Defendant. It gives the factual basis for the application. It is equally inelegantly drawn!
4. The Plaintiff has opposed the application by **replying affidavit sworn by her and filed on 22nd February 2012**. The grounds of opposition emerging therefrom include –
 - (i) That though the delay was admitted, the same was caused by her former

advocates.

(ii) That she is still interested in pursuing her claim against the Defendants.

5. I have considered the submissions of the learned counsels appearing, including the cases cited. I have also perused the court record.

6. This suit was filed on 16th March 2000. It is a claim in land that is founded upon an alleged agreement for sale dated 4th September 1992. The Defendants entered appearance on 3rd April 2000 and filed defence on 7th April 2000. On 27th April 2000 the Plaintiff filed an amended plaint.

7. On 31st August 2000 the Plaintiff filed her list of documents and statement of issues. On 9th February 2001 the Defendants filed a “statement of amended issues” and on 20th February 2001 their list of documents.

8. The present application was filed on 15th March 2011. Apart from some interlocutory applications that had been filed by the Defendants, there was no other activity after the pleadings closed about mid-2000.

9. Order 17, Rule 2 of the Rules provides as follows –

“2. (1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”

Under subrule (3) of the same rule a party may apply for dismissal under subrule (1).

10. Between February 2001 (when the Defendants filed their list of documents and statement of issues) and March 2011 when this application for dismissal was filed, it is a period of about ten (10) years. During all that time the Plaintiff did not fix her case for hearing. She acknowledges that very inordinate delay.

11. The explanation she offers for the delay is that she was directed by her former advocates to wait to be informed when a hearing date is taken; that she waited until 27th January 2012 when she visited her advocates’ offices and was informed of the present application; that she was angry with her said advocates; and that she should not be punished for the errors of her former advocates.

12. It is fine for a litigant to entrust her/his matter to her/his advocates and expect that the advocates would act as required in the client’s best interests. But to wait for ten (10) years without enquiring from the advocates the state of one’s matter is another thing altogether! It appears that the Plaintiff was content to wait forever without prosecuting her case.

13. I am not satisfied that the Plaintiff has offered a credible reason for the very long delay in prosecuting her case.

14. I also note that it is not the original parties to the sale agreement that have sued each other but their successors. With the long passage of time it will not be possible to have a fair trial of the action because memories fade.

15. In the circumstances I will allow the application. The Plaintiff’s suit is dismissed for want of prosecution with costs to the Defendants. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF JUNE 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 14TH DAY OF JUNE 2013