

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 325 OF 2009

JOHNSON MUTHENGI KITHETE.....1ST PLAINTIFF

MUNGI FARMERS TOBACCO COMPANY LTD.....2ND PLAINTIFF

VERSUS

BARCLAYS BANK OF KENYA LTD.....DEFENDANT

RULING

1. The Notice of Motion dated 5th April, 2013 is brought pursuant to provisions of section 3A of the Civil Procedure Act; Order 17 Rule 2 of the Civil Procedure Rules and all other enabling provisions of the law.
2. It seeks an order dismissing the plaintiffs' suit against the defendant for want of prosecution with costs to the defendant.
3. It is premised on grounds that there has been inordinate delay on the part of the plaintiff in bringing the suit to a conclusion; the suit was last in court on 10th June, 2010 and the plaintiff has taken no step to prosecute it; and that the delay is a manifestation of the plaintiff's lack of interest in the prosecution of the suit.
4. The application is supported by an affidavit sworn by Marion Karanja an advocate in conduct of the defendant's case suit who depones that from the time the suit was instituted on 29th October 2009 the plaintiff has never set it down for hearing. Failure to prosecute the suit has subjected the defendant to unending litigation.
5. The application is unopposed.
6. This suit was filed under certificate of urgency on 29th October 2009. The relief sought was an injunctive order restraining the defendant from advertising for sale properties situated on L.R. Machakos Town/Block 1/438 and L.R. No. Machakos Town Block 1/439 and a declaration that the intended sale was illegal.
7. The matter was last before court on 29/6/2011. No step has been taken by the plaintiff to prosecute the case. The application serving as a notice to the plaintiff to show cause why the matter could not be dismissed for want of prosecution was served on counsel for the plaintiff on 8th May, 2013. No response to the application was filed. Today they have also failed to appear in court for hearing. They have demonstrated lack of interest in the case.
8. In the premises, this court has absolutely no reason to disallow the order sought. The suit filed against the defendant is therefore dismissed with costs to the defendant.

DATED, SIGNED and DELIVERED at MACHAKOS this 24TH day of SEPTEMBER, 2013.

L.N. MUTENDE

JUDGE