



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

E.L.C. CASE NO. 52 OF 2013 (O.S)

IN THE MATTER OF SECTION 38 OF LIMITATION OF ACTIONS ACT

AND

IN THE MATTER OF REGISTRERED LAND ACT

KIRANGI NYAMU APPLICANT/RESPONDENT

VERSUS

IRERI MBOGO1ST RESPONDENT

NGURI NTHAUTHO 2ND RESPONDENT

GABRIEL NGAI 3RD RESPONDENT

EDWARD IRERI 4TH RESPONDENT

RULING

This is in respect to the 3rd defendant/applicant's application dated 14th September 2012 seeking the dismissal of this suit for want of prosecution. The same is founded under **Order 17 Rule 2 (1) and (3) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act** and is supported by the affidavit of the 3rd defendant/applicant in which he has deponed, inter alia, that the 1st and 2nd respondents are deceased and that though this matter was filed on 25th February 2010, no steps have been taken by the plaintiff/respondent to prosecute it hence this application.

However, in a replying affidavit by SHEM NYASAE advocate for the plaintiff, it is deponed, inter alia, that the 3rd defendant did file and serve an amended defence on the plaintiff on 4th May 2010 and that on 13th June 2011 and 7th September 2012, the plaintiff invited the firm of R.M. Mugo to fix a hearing date but they declined saying they were not on record. Copies of the said invitations were annexed to the replying affidavit – annexures KN I and KN 2. It is also denied that three (3) years have elapsed without the plaintiff taking any steps in this matter.

I have considered the application and the rival affidavits of the 3rd defendant/applicant and Mr. Nyasae counsel for the plaintiff.

What is clear from the record is that the plaintiff filed the Originating Summons against the four (4) defendants herein on 25th February 2010 seeking to have become entitled to some parcel of land

by adverse possession. The 3rd and 4th defendants filed replying affidavits in person. It is indicated in the supporting affidavit of the 3rd defendant that the 1st and 2nd defendants are deceased. There is nothing in the Court file to indicate that the firm of R.M. Mugo was ever on record in this suit for any of the defendants and I therefore do not understand why the firm of Nyasae Advocates were sending invitations to that firm yet they are not on record.

The record did show that the matter was last in Court on 9th June 2010 when W. Karanja J (as she then was) had it stood over generally as none of the parties were present. Nothing happened thereafter until the application now before me was filed on 14th September 2012. That is over two (2) years ago. No cause has been shown why this suit should not be dismissed. The explanation that the firm of R.M. Mugo were invited to fix this suit for hearing cannot be a satisfactory explanation because that firm was never on record. All that I can see from the pleadings herein is that the firm of R.M. Mugo Advocate drew the replying affidavit of the 3rd defendant/applicant herein. However, that does not amount to entering an appearance for the 3rd defendant as envisaged under **Order 6 of the Civil Procedure Rules.**

Secondly, even if the invitation to the firm of R.M. Mugo elicited no responses, that does not explain why the plaintiff took no steps to move the Court since 9th June 2010 when the matter was last in Court. The Court can only conclude that the plaintiff lost interest in this suit which conduct was not in keeping with his duty to assist the Court achieve one of its primary objective under the **Civil Procedure Act** which is to facilitate the expeditious disposal of cases.

The plaintiff having failed to show to this Court's satisfaction why the suit herein should not be dismissed, I am satisfied that the 3rd defendant's application seeking its dismissal is well merited. I therefore dismiss the plaintiff's suit with costs thereof, and also costs of this application to the 3rd defendant.

B.N. OLAO

JUDGE

10TH DECEMBER, 2013

10/12/2013

Coram

B.N. Olao – Judge

CC – Muriithi

No appearance for Applicant

Mr. Kinyua for Nyase for Respondent present

MR. KUNYU: Ruling was due on 9th December but I have just been instructed to hold brief for Nyasae for respondent.

COURT: Ruling delivered this 10th day of December 2013 in open Court.

Mr. Kinyua for Nyasae for respondent present

No appearance for applicant.

B.N. OLAO

JUDGE

10TH DECEMBER, 2013