



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 1561 OF 2002

BOROP MULTIPURPOSE CO-OPERATIVE

SOCIETY LTD.....PLAINTIFF

VERSUS

DOUNE FARM LTD & OTHERS.....DEFENDANT

RULING

Notice of Motion brought under Order 17 rule 2(i) (ii) and 3 of Civil Procedure Rules seeks order to dismiss this suit for want of prosecution and that orders granted on 22/7/2003 be discharged on the grounds that this suit has not been heard since 2002 when it was filed.

There have been many applications and on 22/7/2003 adjournment was requested so that main suit may be fixed for hearing. Other numerous applications have been partly executed.

It is now over one year since any step was taken in the matter. The plaintiff is enjoying an order for status quo. The application is supported by affidavit of Richard Kay Muir Director of first defendant. That the first defendant is the registered owner of LR 9045/9 subject of suit. The suit was filed in 2002.

That since September 2009 no step has been taken by the plaintiff. On 13/10/2010 and 28/2/2011 invitation to fix dates were sent but plaintiff advocate did not appear at registry for purposes of fixing hearing dates.

It is in the interest of justice that this suit be dismissed.

I have perused the documents of title and other supporting annexures of the application. I have also considered the arguments advanced by the plaintiff and I am of the view that the plaintiff has engaged in the tactics of causing delay in prosecution of this suit. It has not indicated any interest to proceed with the prosecution of the suit.

In the circumstances I find that the provisions of order 17 Criminal Procedure Code is complied with.

Therefore I allow this application and grant orders as prayed with costs in the suit and application to the defendants.

J.N. KHAMINWA
JUDGE

William Kipkorir Alusei for the plaintiff wishes to address the court

Mr. Bitok with Mr. William Kipkorir

We ask for stay for a period of 30 days pending a formal application for stay.

This is a land matter that the situation on grounds does allow us to delay. I also pray for leave to appeal. Also certified copies of Ruling and proceedings we undertake to pay copying charges.

For Defendants

We have no objection for leave to appeal. On issue of stay there is no use. It is their suit.

The issue of costs does not arise we have not filed for costs yet.

Mr. Ogola

I object to stay being granted.

Court

The plaintiff's wish to appeal against the order made. In view of what they say I think it is just to keep the situation for the time being undisturbed.

I grant stay for a period of 30 days from today.

I also order Ruling to be typed and supplied together with proceedings. Leave to appeal is hereby granted.

Dated and delivered at Nairobi this 17th day of May, 2012.

J.N. KHAMINWA

JUDGE