



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS

Environmental & Land Case 316 of 2007

STEPHEN MUGO MUCHEMI.....
.....**PLAINTIFF**
VERSUS

NAIROBI CITY COUNCIL1ST
DEFENDANT

GEOFFREY KAMAU AYUB.....2ND
DEFENDANT

JOSHUA WAMUGO WAMAE.....3RD
DEFENDANT

SALIM MURIGU MBUGUA.....4TH
DEFENDANT

RULING

1. The 3rd Defendant has taken out this Motion under the provisions of Orders 40 Rule 7 and 51 Rule 12 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act. He seeks prayers that the injunctive orders obtained herein on 30th August, 2000 be discharged as the Plaintiff has been indolent in prosecuting the suit to conclusion and has failed to substitute the 4th Defendant so as to ready the suit for hearing. That the Plaintiff’s delaying tactics have denied the 3rd Defendant’s right to quiet enjoyment and possession of the suit land which he also cannot develop due to the order thereby being occasioned immeasurable losses yet the Plaintiff does not move the case towards conclusion. The Applicant describes the delay as inordinate.
2. The 3rd Defendant swears the supporting affidavit and depones therein that the Plaintiff has taken no steps to prosecute the suit land and the continued existence of the order is extremely prejudicial to the applicant.

3. In his Replying Affidavit the Plaintiff states that the apparent delay was caused by his attempts to trace the relatives of the 4th deceased defendant and since none have been found the Plaintiff has now abandoned his claim against such Defendant and opted to proceed against the surviving Defendants.

4. Submissions by both counsel herein appearing for their respective clients have been considered. It is true that this is an old case having been filed during 2007. An earlier application by the 3rd Defendant to dismiss the suit was abandoned due to the death of the 4th Defendant. Reasons for the delay advanced are the death of the 4th Defendant and difficulties in tracing his kin for substitution. The court record would show that the Plaintiff has not actively pursued the prosecution of his case and that may well be explained by the fact of the existence of the injunctive orders in his favour. The subject matter of the case is some land in Umoja, Nairobi that is registered in the name of the 3rd Defendant. The Plaintiff cannot be allowed to hold the applicant at ransom while he enjoys a discretionary order. And as it is evident that the Plaintiff will not move unless forced to, and since he says that he is now ready to proceed with the suit and so that the greater justice is served to all parties in the case, the Plaintiff is hereby ordered to set down his suit for hearing within ninety (90) days of today in default of which the same will automatically be dismissed as against the third Defendant with costs. In the meanwhile the Plaintiff will pay the costs of the application and give a security for damages of Kes. 1,000,000/= within the said ninety (90) days given above as a condition for the continued existence of the injunctive orders. In default of giving such security as is hereby ordered the orders of 30th August, 2000 shall automatically be discharged.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT **NAIROBI** THIS **31ST** DAY OF **JULY, 2012**.

P.M. MWILU
JUDGE

In the presence of:-

.....Advocate for 3rd Defendant/Applicant
.....Advocate for Plaintiff/Respondent
.....Court Clerk

P.M. MWILU
JUDGE