



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE**

Civil Case 79 of 2003

SILVANUS BWOSI GANASI ::::::::::::::: PLAINTIFF.

VERSUS

JIM MATIA BANDI ::::::::::::::: DEFENDANT

R U L I N G.

By a Notice of Motion dated 18th December, 2009 pursuant to the provisions of sections 3 and 3A of the Civil Procedure Act, Orders XVI Rule 5(d), Order XXX1 Rules 1 and 2 of the Civil Procedure Rules, Limitation of Actions Act (Cap 22) Laws of Kenya and all the enabling provisions of the law, the applicant seeks orders:-

1. **THAT**, service of this application be dispensed with in the first instance.
2. **THAT**, the plaintiff/respondent suit be dismissed for want of prosecution.
3. **THAT**, the plaintiff/respondent claims be dismissed for being time barred by dint of the provisions of the Limitation of Actions Act (Cap 22) Laws of Kenya.
4. **THAT**, the plaintiff/respondent suit be dismissed for lack of annexed authority of a next of friend.
5. **THAT**, the plaintiff/respondent/relatives/sons/agents/servants/ employees be evicted forthwith from the portion of the applicants land (Lugari/Likuyani Block 1/Vihiga/520) and portion of the suit property land (Lugari/Likuyani Block 1/Vihiga/11).
6. **THAT**, costs and damages be borne by the plaintiff/respondent counsel on record.

The application is based upon the grounds:-

1. **THAT**, this is a very old case in court and litigation ought to be concluded/come to an end.
2. **THAT**, since 27/11/2008 the plaintiff/respondent has not taken any step to list the case for hearing and that it is clear that the respondent is not interested in prosecuting this matter.
3. **THAT**, the claim of the respondent is statutorily time barred.
4. **THAT**, the suit is filed for the plaintiff/respondent without authority a next friend as the respondent is of unsound mind/minor (unable to commence this proceedings).
5. **THAT**, the Lugari Land Control Board letters of consent No. 120/2000 dated 27/1/2000 partitioned the suit property land measuring about 1.214 Ha. into two portions of 0.814 hectares for the applicant herein and 0.40 hectares for the respondent hence joint ownership.
6. **THAT**, the Kakamega District Land Registrar had on 3/12/2009 (by dint of the said letters of consent) registered the applicant herein – 1st registration) on Lugari /Likuyani Block 1/Vihiga/520 measuring about 0.80 Ha) the partition of the suit property – Lugari/Likuyani Block 1/Vihiga/11.

7. **THAT**, the respondent/relatives/agents/servants/sons/employess have out of spite during the 2007 post general election violence occupied the said portion of the applicants land – Lugari/Likuyani Block 1/Vihiga/520 (the partition of the said suit property land, formerly in joint ownership) without any justifiable reason or cause and ought to be evicted forthwith subject to section 143 of the Registered Land Act (Cap 300) Laws of Kenya.
8. **THAT**, costs and damages ought to borne by the respondents counsel.

The application is predicated upon the annexed affidavit of Jim Matia Bandi.

The application was served upon the firm of M/s. Barongo & Co. Advocates. Subsequently, service of the hearing notice was effected upon the firm of Barongo & Co. Advocates on 13th January, 2010 as per the affidavit of Service of Robert Kisira Kidiga sworn on the 9th day of April, 2010.

When the said firm of M/s. Barongo & Co. Advocates failed to comply with the provisions of order L Rule 16 (1) of the Civil Procedure Rules [as no grounds of opposition or replying affidavit was filed with the time prescribed by the law on application.] I granted the applicant leave to proceed ex-parte.

I have taken cognizance of the evidence of the applicant vide his affidavit in support aforesaid. Having done so, I am persuaded that this matter has been long standing. That since 27th November, 2008 the plaintiff has not taken any steps to list the case for hearing. However, it is clear to me on the evidence that the respondent is not interested in prosecuting this case.

In the foregoing circumstances, the only order which commends itself to me is to dismiss this suit with costs to the respondent. It is so ordered.

Dated and delivered at Kitale this 27th day of April, 2010.

N.R.O. OMBIJA.

JUDGE.