



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT NO.1020 OF 2005

THE GREEN BELT MOVEMENT.....PLAINTIFF
VERSUS
CASTLE ROCK HOMES LTD.....1ST DEFENDANT
NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY.....2ND DEFENDANT
NAIROBI CITY COUNCIL.....3RD DEFENDANT

RULING

1. By a chamber summons dated 6th August, 2009, Castle Rock Homes Ltd, the 1st defendant herein seeks orders that the plaintiff's suit be dismissed for want of prosecution; and that the plaintiff do bear the costs of this application and the suit.
2. The application is anchored on the grounds, that the suit herein was filed on 15th August, 2005 contemporaneously with an application dated 8th August, 2005. Subsequently, the plaintiff filed another application dated 4th May, 2006. The said application last came up for hearing on 26th February, 2007 when the matter was stood over generally to enable the plaintiff enjoin other third parties affected by the suit. The matter was last in court on 22nd July, 2008 for the hearing of the 3rd defendant's application dated 11th April, 2008 for dismissal of the suit for want of prosecution. It is now over two and a half (2½) years from the date of the court order requiring enjoinder of third parties (26th February, 2007) yet the plaintiff has not complied with the court order or otherwise fixed a hearing date for the suit or its application. It is apparent that the plaintiff is not keen to comply with the court order and is no longer interested in prosecuting this suit. The applicant contends that the delay in complying with the court order and/or prosecuting this matter has been prolonged and is inexcusable in the circumstances. He therefore urges the court to dismiss the plaintiff's suit for want of prosecution.
3. A replying affidavit has been sworn by Lillian Muchungi, the head of advocacy department in the plaintiff's organization. She maintains that the plaintiff has demonstrated its willingness to prosecute the suit, and that the delay was caused by the plaintiff's efforts to identify the 3rd parties, and the subsequent application by the 3rd defendant for dismissal of the plaintiff's suit. Mr. Magut who appeared for 1st defendant/applicant has submitted that the plaintiff does not appear to be interested in the prosecution of the suit the same having been overtaken by events, as the buildings whose construction was being objected to, is now completed. Mr. Magut points out that the plaintiff ought to have come back to the court if it had issues tracing the 3rd parties.
4. Mr. Nyakuri who appeared for the 3rd defendant also supported the application for dismissal of the plaintiff's suit maintaining that the delay in setting down the suit is inordinate. Mr. Nyakuri noted that the reason given by the plaintiff for the delay is not acceptable as the plaintiff has not attempted to compel the 1st defendant to reveal the identity of the 3rd parties through discovery.
5. I have given due consideration to this application. I have also carefully perused the court record. It is evident that the plaintiff has been rather lax in pursuing the prosecution of this case. In particular, the plaintiff does not appear to have taken any action to comply with the order of 26th February, 2007, nor has the plaintiff taken any action to pursue the finalization of pleadings and pretrial

procedures to facilitate the hearing of this suit. Nonetheless, the litigation before the court appears to be a matter of public interest as it is relating to issues of environmental health.

6. In the circumstances, I find it fair and just that the plaintiff be given one final opportunity to prosecute the suit. Accordingly, I direct that the plaintiff shall take action to finalize the pleadings and pre-trial procedures, and take a date for the hearing of this suit within 90 days from the date hereof. The plaintiff shall further pay costs of this application to the applicant. In the event that the plaintiff fails to comply with the above orders, the applicant shall be at liberty to re-apply for the dismissal of the plaintiff's suit.

Those shall be the orders of this court.

Dated and delivered this 25th day of November, 2010

H. M. OKWENGU
JUDGE

In the presence of: -

Ngome H/B for Nyaburi for the plaintiff

Momanyi for the defendants

B. Kosgei - Court clerk