



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

CIVIL CASE NO. 355 OF 2007

JAMES MUTUA MWANZIA..... 1ST PLAINTIFF

TIMOTHY NZOMO.....2ND DEFENDANT

NGWILI KYALO MAUNDU.....3RD DEFENDANT

VERSUS

KYANZAVI FARMERS CO. LTD. DEFENDANT

RULING

By this application, the Defendant applies from the court orders that this Honourable court be pleased to dismiss this suit for want of prosecution and also prays for the costs of the application to be provided for. The application is brought by a Notice of Motion dated 1st November, 2010, and is made under Order XVI Rule 5 (d) of the Civil Procedure Rules; Order L Rule 1 of the Civil Procedure Rules; and Section 3A of the Civil Procedure Act.

The application is supported by the annexed affidavit of STEPHEN NJOROGI GIKERA, the Advocate having the conduct of this matter on behalf of the Defendant herein, and is based on the following grounds –

- 1. That the Plaintiffs/Respondents are not interested in the above matter anymore.**
- 2. That the Plaintiffs/Respondents have not taken any step to have this matter dealt with and disposed of expeditiously.**
- 3. That it is not fair and in the interests of justice for the Defendant/Applicant to be kept in darkness due to laxity and disinterest in this matter on the part of the Plaintiff.**
- 4. That the Plaintiffs are not serious, keen enough and/or interested in the suit and it is only fair and just that the same be dismissed with costs**
- 5. That the Plaintiffs have slept on their right and as such are guilty of laches.**
- 6. That there must be an end to litigation.**

When the matter came for hearing on 29th November, 2010, Mr Gikera appeared for the applicant but there was no appearance for the Defendant. The court record shows that the Plaintiff's Advocates were duly served on 10th November, 2010. However, they filed neither a replying affidavit nor grounds of opposition; nor did they attend court for hearing on the material date. Being satisfied that they were served in sufficient time to attend court but declined to do so, the court opted to proceed ex parte.

Having considered the application and Mr Gikera's submissions, I note from the record that this matter was last in court on 21st September, 2007, when the court delivered a ruling dismissing an application for an interlocutory injunction against the Defendant. Since the date of that ruling, it appears that the Plaintiff lost interest in the case. That lack of interest could not have been better demonstrated than by the Plaintiff's failure to file any replying affidavit or grounds of opposition to the application for dismissal of the suit, and further by failing to attend court on the hearing date.

For the above reasons, I agree with Mr Gikera for the Applicant, that the Plaintiff/Respondent is not interested in prosecuting this suit. The application therefore succeeds and I accordingly make the following orders –

1. **This suit is hereby dismissed with costs to the Defendant.**
2. **The Plaintiff will also meet the costs of this application.**

Dated and Delivered at Nairobi this 14th day of December,

L NJAGI

JUDGE