



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 1710 of 2001

RIJMAN COMPANY LTD:.....PLAIANTIFF

VERSUS

AGRICULTURAL FINANCE CORPORATION1ST DEFENDANT

LEGACY AUCTIONEERING SERVICES:.....2ND DEFENANT

RULING

The Plaintiff filed the plaint herein on 9th November 2001 claiming for an injunction restraining sale of some landed property and for general damages and costs. The Defendants filed their Defence on 9th January 2004. Between the filing of the suit and Defendants Defence the parties were in court on the hearing of an application for an injunction and for amendment of plaint.

The Defendant has brought this Application on the ground that it is over a year since pleadings closed and the Plaintiff has not set the suit down for hearing as he appears to have lost interest in the same. This delay is described as being inordinate, in excusable and an abuse of the court process.

The record does not indicate when the last move towards getting the suit heard was. All that has happened is the hearing of Applications whose nature has not been to dispose of the suit. The Application for dismissal made earlier in this case would have succeeded but for the fact of some negotiations being held towards an attempt at reaching a settlement. I have to agree that the Plaintiff has all along given the impression of stalling the hearing of the suit.

I see on file an application by counsel appearing for the Plaintiff for leave to cease acting for the Plaintiff. That application was scheduled to be heard on the same date as the application now being considered. There was no appearance by counsel on the said date and the Application was left in abeyance. That though will not affect the consideration of this Application.

I find that the plaintiff has not proceeded with diligence and any continued stay of this suit in court records serves no useful purpose save to hang over the head of the Defendant and clog its records and reserves. To do justice to the Applicant is to dismiss the suit with costs which I hereby do. I award costs of the Application to the Defendant/Applicant.

Orders accordingly.

DATED AT ELDORET THIS 27TH DAY OF JANUARY 2009

P.M.MWILU

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2009.

J. KHAMINWA

JUDGE

DELIVERED IN THE PRESENCE OF:

.....Advocate for the Applicant

.....Advocate for the 1st Defendant

.....Advocate for the 2nd Defendant