



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

Civil Case 117 of 2006

DICKSON CHERUIYOT CHEPKWONY..... APPLICANT

VERSUS

DANIEL KIPKOECH MARITIM1ST RESPONDENT

NATIONAL BANK OF KENYA.....2ND RESPONDENT

RULING

Application 11th November, 2008 to Dismiss Suit

I: Background

1. The respondent original applicant suing on behalf of the estate of Chemarus Chepkorir Maina filed an originating summons on 18th December, 2006 seeking the orders of the High Court for an injunction restraining the applicant/respondent 1 and 2 from disposing off the suit land being LR KERICHO/KEBENETI/276.
2. The application for an injunction was granted (KimaruJ) on the 22nd March, 2007. As soon as the injunction orders were granted no action was taken by the respondent/applicant.
3. Objections had been raised as to the originating summons as having been filed irregularly, which application by the applicant/respondent was dealt with by Kimaru J.
4. The applicant, respondent now files this application to dismiss this suit for want of prosecution.

II: Application 11.11.08

Dismissal of suit for want of prosecution

5. The 2nd respondent deponed to an affidavit that since the injunction had been issued on 22nd March, 2007 no action had been taken by the respondent/applicant in the originating summons.
6. She prayed that the suit be dismissed.
7. In reply, the respondent/applicant stated that his advocate had made efforts to trace the 1st respondent but was unable to find the said respondent. That was the reasons of delay and prays to compensate the appellant/respondent in costs.

III: Findings

8. I find that the respondent/applicant has been lax in the conduct of this case. It would be feasible that alternative application of substitutive service would have been applied for the 1st respondent. The application for direction thereafter ought to have been filed but had not.

9. I would though dismiss this application on grounds that the respondent/applicant be given an opportunity to proceed with this case.

10. The respondent/applicant agrees to pay costs which costs I hereby award, throw away at Kshs. 5,000/= for to-day.

DATED this 5th day of February, 2009 at KERICHO

M.A. ANG'AWA

JUDGE

Advocates

S.K. Sigira advocates from M/S Siele Sigira & co. advocates instructed to hold brief for M/S Kimonjo Kiburu & Co. advocates for the Applicant originally 2nd Respondent – present

J.M. Motanya advocate instructed by Motanya & Co. advocates for

Respondent originally applicant – present