



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO Civil Suit 85 of 2002

KIPSIGIS TRADERS LIMITED..... PLAINTIFF

VERSUS

SAMWEL KIPRONO SANG.....DEFENDANT

RULING

Application to dismiss suit for want of prosecution

I: Background

1. M/S Kipsigis Traders Ltd the original Plaintiff and respondent in this application, filed a suit on the 19th December, 2002 seeking orders to declare construction on land unsurveyed No. 18 Municipality Council Kericho belongs to them. That a permanent injunction do issue to stop any construction thereon.
2. An application for an injunction was also filed simultaneously on the said day.
3. The defendant/applicant made reply to the application for an injunction. Inter parties hearing was held before Visram J (*as he then was*) and a ruling delivered on the 12th February, 2003 in which the Hon. Judge dismissed the prayer for injunction.
4. The plaintiff claims he bought the land from the former mayor of Kericho. The defendant /applicant was able to show he held a title deed to the property.
5. Based on the findings of the case law of

Mansukhalal Jesang Maru

v

Wangari Mathai

Eldoret HCCC. 207/99

Virsam J

and the case of

Livinstone Nkuruna

Patrick Seki

CA 31/96

Mulwa J

That a registered owner to title holds the parcel of land absolute, the application for injunction by the Plaintiff/respondent was dismissed.

6. The Plaintiff/respondent took no action further save on 26th July, 2007 when they attempted through their advocates to take dates for hearing. No dates were taken.

7. On 25th June, 2009 the advocate on record for the plaintiff was served with the application dated 18th June, 2009. The application sought orders to dismiss the suit pending before court for lack of prosecution.

II: Application 18th June, 2009

8. Since the ruling of this matter no action was taken. The applicant/defendant prays suit be dismissed.

III: Held

9. For six years this matter has been pending and the plaintiffs have taken no action to have the suit set down for hearing. After three years the court has powers to dismiss a suit with no notice to any party. In this case the said plaintiff has been served through his advocate but failed to attend court.

10. The application be and is hereby granted. This suit be and is accordingly dismissed for lack of prosecution with costs to the defendant/applicant.

DATED this 29th day of September, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

C.K. Korir advocate instructed by M/S C.K. Korir & Co. advocates for the Defendant/applicant – present

M/S Akinyi & Co. advocates for the Plaintiff/Respondent - absent