



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 249 of 2007**

**MOSES MWANGI WACHIRA ..... PLAINTIFF**

**VS.**

**ANTHONY KARIUKI WAMBUGU ..... DEFENDANT**

**RULING**

The applicant filed a suit against the defendant claiming ownership and an injunction order in respect of a parcel of land known as PCR Plot No.2 Kasarani, Nairobi. Alongside the plaint, he filed an application by way of Chamber Summons to restrain the defendant from dealing in the said piece of land pending the hearing of the main suit.

On 26<sup>th</sup> April, 2007, Aganyanya J (*as he then was*) dismissed the application while emphatically stating that the applicant would have an uphill task to establish the conditions enunciated in the case of **Giella vs. Cassman Brown & Co. Ltd [1973] EA 358** to entitle him to an order of injunction sought in the said application and proceeded to dismiss the same with costs.

Thereafter the plaintiff did not take any action in respect of this particular case. By an application by way of Notice of Motion dated 12<sup>th</sup> May and filed on 22<sup>nd</sup> May, 2009, the defendant has moved the court for an order that this suit be dismissed with costs for want of prosecution. The application is made under Order XVI rule 5(d) and Order L rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The grounds upon which that order is sought are that it is now over two (2) years since the plaintiff took any action in prosecuting the suit and it would appear the plaintiff is not keen in prosecuting the same thereby abusing court process.

It is also the defendant's case that a lot of anxiety is being inflicted on him and that it would be in the interest of justice that this application be allowed as the same is brought in good faith.

There is an affidavit sworn by Jane Njeri Onyango the learned counsel for the defendant/applicant in support of the said application.

The statement of defence herein was filed on 29<sup>th</sup> March, 2007. This was just before the application for an injunction was dismissed by Aganyanya J as I have noted above. Since then, as I have observed, no steps have been taken. There is no reason whatsoever why the plaintiff has not taken any steps to prosecute his case. The only reason I can attribute to this laxity is that, he has lost interest in his suit having been confronted with the defence showing that, the defendant and another are the owners of the land in dispute as tenants in common in equal shares.

The orders sought fall squarely within the cited provisions of law and I find no reason why the same should not be granted. Accordingly, I order that the plaintiff's suit herein is dismissed for want of prosecution. The defendant shall have the costs of this application.

Orders accordingly.

*Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of October, 2009.*

**A. MBOGHOLI MSAGHA**

**JUDGE**