



REPUBLIC OF KENYA



KENYA LAW
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**Said & others v Burhan (Civil Suit 132 of 2018)
[2022] KEELC 13812 (KLR) (21 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13812 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT 132 OF 2018
M SILA, J
SEPTEMBER 21, 2022**

BETWEEN

ABDULAZIZ ABUD SAID & OTHERS PLAINTIFF

AND

ANJUMAN E BURHAN DEFENDANT

RULING

(Application to dismiss suit for failure to disclose a cause of action and for want of prosecution; court restricting itself to question whether suit should be dismissed for want of prosecution; more than one year having lapsed without activity in the matter; suit dismissed for want of prosecution)

1. The defendant has filed an application dated 23 March 2021 seeking the following orders :-
 - i. That the plaintiff's suit dated 29 May 2018 be struck out as against the defendant for not disclosing a reasonable cause of action and/or being an abuse of the process of court.
 - ii. That in the alternative, the plaintiff's suit dated 29 May 2018 be dismissed for want of prosecution.
 - iii. That the costs of this application and the suit be provided for.
2. Despite being served, the plaintiff filed no response to the application.
3. I have gone through the record. The plaintiff commenced this suit through a plaint dated 29 May 2018 and filed on 31 May 2018. In it, he claimed to be the registered proprietor of the land parcel "Block Number XVII 5/104 situated in the Mombasa municipality in the Mombasa district containing by measurement 100 X 60 or thereabout and being subdivision number 897, 898 and 899 mainland north." He averred that he has wanted to develop the property but his efforts have been thwarted by the defendant who has encroached into the land. In the suit, he has asked for orders to compel the defendant to give vacant possession and a permanent injunction to restrain him from the suit land.



4. In this application, the defendant contends that the plaintiff is not the registered proprietor of the suit land as he alleges to be and that at the time that the suit was filed the defendant was also not the registered proprietor. It is thus the view of the defendant that there is no reasonable cause of action in this case. In addition, the defendant has pointed out that there has been inactivity in the suit and it therefore ought to be dismissed for want of prosecution.
5. I have considered the above. It is difficult for me to categorically give a statement that neither plaintiff nor defendant are the registered proprietors of the land without the suit having been heard. I will therefore restrict myself to whether the suit should be dismissed for want of prosecution. I have already mentioned that the plaint was filed on 31 May 2018. Together with the plaint, the plaintiff filed an application for injunction. The application came up for *inter partes* hearing on 11 July 2018 and was allowed on the day as no reply had been filed by the defendant. The matter then came up for pretrial on 4 October 2018 when it was adjourned for reason that the defendant had not been served. I can see that counsel for the plaintiff took a date in the registry on 13 February 2019 and the matter was to be mentioned on 4 April 2019 before the Deputy Registrar. Counsel did not appear in court on 4 April 2019 and also failed to appear in court on 21 May 2019, 8 August 2019, and 25 September 2019 which is the last date on record before this application was filed on 29 March 2021. Even if I am to take 25 September 2019 as the date that the suit was adjourned generally, more than one year had lapsed to the time that this application was filed. The suit is thus liable to be dismissed pursuant to the provisions of order 17 rule 2, which authorizes the court to dismiss a suit for want of prosecution if more than one year has lapsed without a step being taken by any of the parties.
6. The plaintiff has not responded to the application and has failed to give any reason as to why this suit should not be dismissed.
7. I therefore proceed to dismiss this suit for want of prosecution with costs to the defendant. The orders of injunction earlier given are discharged.
8. Orders accordingly.

DATED AND DELIVERED THIS 21ST DAY OF SEPTEMBER 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA

