



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Civil Case 394 of 1992

STANELY MURIITHI PAUL PLAINTIFF

VERSUS

CONSOLIDATED BANK OF KENYA.....DEFENDANT

RULING

The respondent in this application brought an action against the applicant seeking

- (a) a declaration that the intended sale of the respondent's land No.Ngariama/Ngiriambu/1290 was fraudulent, null and void
- (b) a declaration that there is no legal mortgage enforceable in law
- (c) a declaration that the respondent is not indebted to the applicant
- (d) injunction against the applicant restraining it from advertising, selling transferring and/or interfering with the suit land
- (e) General and special damages
- (f) Costs

That suit was filed on 16th November, 1992. As is the practice the suit was filed on the same day simultaneously with an application under certificate of urgency seeking, in the main, temporary injunction against the applicant.

That application was dismissed on 2nd December, 1992. On 29th November, 1993, nearly one year later the matter was before the Deputy Registrar but it is not clear why. On that day both parties were absent and it was marked S.O.G (Stood Over Generally).

On 21st May, 2003, about 10 years later the applicant brought the present application in which it seeks that the suit against it be dismissed for want of prosecution citing the delay in prosecuting the suit.

The application was canvassed *ex parte* as the respondent or his counsel did not attend the hearing of the application despite service. Neither did they reply to the application.

From the background set out above it is clear that the last time the respondent took any steps in this matter was on 2nd December, 1992 when his application for injunction was dismissed.

That is a period of eleven (11) years. The same was stood over generally on 29th November, 1993. Under the provisions of Order 16 rule 5(d) of the Civil Procedure Rules, the court is vested with jurisdiction to, either on application by the defendant or on its own motion on notice to the parties, set down for hearing the suit which the plaintiff has failed to set down for hearing, or to dismiss it.

This is a suit where the respondent, after losing his application for injunction lost interest and hope and went to sleep. It is a suit which ought to have been dismissed 11 years ago. But its time has come and it is ordered that the respondent's suit filed on 16th November, 1992 shall be and is hereby dismissed for want of prosecution with costs to the applicant.

DATED AND DELIVERED AT MERU THIS 20TH DAY OF JULY, 2007

W. OUKO

JUDGE