

REPUBLIC OF KENYA

HIGH COURT AT NYERI

Civ Case 201 of 1994

MOSES MUCHUNU MUTURI.....PLAINTIFF

Versus

ATTORNEY GENERAL.....1ST DEFENDANT

LAND REGISTRAR.....2ND DEFENDANT

JOSEPH MURIITHI MUNYIRI.....3RD DEFENDANT

RULING

The Notice of Motion dated 18th October 2006 is brought by the 3rd Defendant. That application is under *Order V1 Rule 13(1) (b)*, and also under *Order XVI Rule 5 (d)* of the Civil Procedure Rules. The 3rd Defendant seeks orders as follows:

- 1. That the suit be dismissed for want of prosecution.**
- 2. That in the alternative the suit be struck off with costs for being *res judicata* and an abuse to the courts process.**
- 3. That the prohibitory order be lifted.**

The affidavit in support of that application is sworn by the 3rd Defendant. He deponed that this suit was last in court on 29th June 2004. On that date it was stood over generally. That since that date the Plaintiff has taken no steps towards prosecuting the matter. That this suit is an abuse of the court process because the issues in this suit have been determined in HCC No. 171 of 1988. The Deponent further stated that the subject land was first registered in the name of Kariira Njogu before it was registered in his name in 1984. That accordingly the Plaintiff has no *locus standi* in this matter. That a prohibitory order was issued in this matter on 21st July 1995. He concluded by seeking that the court will entertain the application. The application was opposed by the Plaintiff. In a replying affidavit the Plaintiff stated that the first and 2nd Defendants had not filed their appearance or defence and since judgment cannot be entered without leave, since it was the government, that the Plaintiff has applied for leave to have judgment against them. That that application is pending awaiting prosecution. The Plaintiff denied that this matter is a *res judicata* because the parties are different from HCC No. 171 of 1988. The Plaintiff concluded in his Replying Affidavit that he is ready and willing to prosecute this claim.

I confirm that I have looked at the proceedings of this court and it is indeed correct that this matter was last in court on 29th June 2004. On that date the Plaintiff did not attend court and the matter was adjourned generally. There has been no other activity in this matter. There has been no attempt to obtain a date for leave to enter judgment against the first and 2nd Defendant. I confirm that I have also gone through the documents filed herein and noted that that application of the Plaintiff seeking leave to enter judgment against the 1st and 2nd Defendants is dated 15th September 1994. What has prevented the Plaintiff to fix that application for hearing is not clear. In my view, it is clear that the Plaintiff has lost interest in this matter and there is no good reason to allow this suit to continue to subsist. These then are the orders of the court:

1. That this suit is hereby dismissed as against the 3rd Defendant for want of prosecution with costs of

the suit being awarded to the 3rd Defendant.

2. The prohibitory order registered against the title No. **INOI/NDIMI/123** on 21st July 1995 is hereby discharged.

3. The 3rd Defendant is also awarded costs of the Notice of Motion date 18th October 2005.

Dated and delivered at Nyeri this 6th day of July 2007.

MARY KASANGO

JUDGE