



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

Civil Case 629 of 1999

1. Land and Environmental Law Division

2. Subject of main suit: Land

LR Kajiado/Ole Kasasi/845

Sub divided to LR Kajiado/Ole Kasasi/617-633

(formerly LR Kajiado/Ole Kasasi/593)

- i) Adverse Possession
- ii) Claim by plaintiff – purchasers interest of 50 acres sold to him in 1983.
- iii) Plaintiff original buyer dies 18 May 2004 substituted by legal representative
- iv) The original buyer dies 18 May 2004
Substituted by legal representative
- v) Original seller dies in 1985
- vi) Suit part heard before Githinji J (as he then was).
- vii) Githinji J – now in court of appeal
- viii) Proceeding ordered to (Visram J) to be typed - to date no typed proceeding
- ix) No action taken by plaintiff.

3. Application 4 May 2007 by defendant applicant;_

- i) Application 12.4.06 filed 3 May 2006 seeking to amend the Originating Summons be dismissed for want of prosecution
- ii) The Originating Summons 18 March 1999 filed 25 March 99 be dismissed for want of prosecution.

4. Reply by plaintiff respondent:-

- i) Suit part heard

ii) Awaiting typed proceeding from court.

5. Held: That the application of 4 May 2007 be rejected.

Explanation by plaintiff is acceptable.

6. Advocate:

S. Mwaura of Mwaura Shairi & Co. Advocates for the plaintiff/Respondent

O. Agina of Agina & Associates Advocates for the defendant/applicant

GUANDAI KARUGU PLAINTIFF

VERSUS

ISHAMEL KOKAYIA PASHADEFENDANT

RULING

1: Application 4 May 2007 by defendant applicant to

i) Dismiss application dated 12 April 2006 and filed 3 May seeking to amend the Originating Summons

ii) The Originating Summons 18 March 1999 filed on 25 March 1999 be dismissed for want of prosecution.

A) Background of application

1. The plaintiff in this Originating Summons passed away on 18 May 2004. He was substituted by his legal representative and widow on 26 April 2005 (Osiemo J).

2. He alleged that sometime in 1982 he had bought 5 acres of land being Kajiado/Olekasasi/593 from the defendant's late father. He alleges to have taken possession of the land in 1983. Before the land could be transferred to him the defendant's father and seller died in 1985. The defendant transferred the land to himself.

3. Without a doubt there appears to be numerous disputes heard in different forms between the parties that finally saw this present suit having been filed.

4. The defendant sub-divided the suit premises from LR Kajiado/Ole Kasasi/593 to LR Kajiado Ole Kasasi/845 which was further sub-divided to LR Kajiado Ole Kasasi/617-6 33. The new plaintiff filed an application dated 12 April 2006 seeking to amend this Originating Summons to being the correct property name into the suit as the original property now no longer existed.

5. The plaintiff was able to give evidence in this trial before Githinji J on 25 November 2002. The suit was stood over generally thereafter Githinji J (as he then was) was alleviated to the court of appeal. The Kenyan law requires that he continues with his part heard till finality. This was since effect not so done. Visram J ordered that the proceeding be typed. This too had not been done by the High court.

6. Between 2002, and thereafter 2006 to date no action in this matter had been taken. The defendant filed this application of 4 May 2007 to strike out the application and suit before the court and thereafter find for the defendant on grounds that there is no prosecution of the matter by the plaintiff.

II: Application of 4 May 2007

7. The Civil Procedures Act requires that if no action on a file has been taken for three months an application may be made to dismiss a suit. If not action has been taken within three years an application be made to dismiss the suit is not made but that the court suo moto may dismiss the suit.

8. It is true that no action has been taken in this matter. The explanation the new plaintiff gives is that the proceeding as ordered by the court has still not been typed. The defendant has changed the nature of the matter in question namely the sub-division of the original land. The application was to rectify the Originating Summons to bring this in line.

III: Finding

9. I hereby hold that the application 4 May 2007 be rejected on grounds that the explanation given by the new plaintiffs is accepted. That further the suit is part heard and the matters herein after should proceed for trial after the application of 12 April 2006 has been set down for hearing.

10. There will be costs to the defendant/applicant paid for by the plaintiff/respondent on grounds that they indeed had occasioned some inactivity in this file.

Dated this 26th day of September 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

S. Mwaura of Mwaura & Co. Advocates for the plaintiff/respondents

O. Agina of Agina & Associates Advocates for the defendant/applicant