

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO.127 OF 2000

TELKOM KENYA LIMITED PLAINTIFF

VERSUS

MOHAMED OMAR HAJI DEFENDANTS

RULING

TELCOM KENYA LTD (the plaintiff) instituted this suit against MOHAMED OMAR HAJI and nine others (the defendants) through an originating summons dated 28th February 2000 under Sections 7, 17, 37 and 38(1) of the Limitation of Actions Act Cap.22 Laws of Kenya, seeking an order that it had become entitled by adverse possession of over twelve (12) years to all that piece of land measuring 57.0 acres registered in the Registry of Titles at Mombasa as C.R.7277/1 and comprised in Plot No.228n Mambui/Malindi (the suit property). As a follow up, the plaintiff sought to be registered as the sole proprietor of the suit property, a declaration that the defendants' title to the suit property is extinguished and that the defendants do execute a Transfer of the suit property to the plaintiff, in default the Deputy Registrar be authorised to sign the relevant papers on their behalf.

The Notice of Motion now before the court is one filed on 10th June 2003 seeking the dismissal of this suit for want of prosecution under Order 16 Rule 5 of the Civil procedure Rules.

In a supporting affidavit Mr. Mohamed Faki Khatib Advocate acting for the defendants, deponed that the suit came up for mention last on 26th June 2002 and ever since neither the plaintiff nor its advocates have set it down for hearing or taken any step to have it finalised.

The application is opposed by the plaintiff and reliance is placed on the Replying affidavit filed on 21st June 2003 by Mr. Paul Bongo Jilani, the Plaintiff's Company Secretary/Chief Legal Officer, who has deponed that the last time the plaintiff's advocate fixed this matter for hearing on 24th April 2002 and duly served a hearing notice upon the defendants. However a few days to the hearing date, the plaintiff's advocate noticed and drew the attention of the plaintiff to Gazette Notices Nos.1401 and 1402 of 1st March 2002 regarding the intended compulsory acquisition of the same suit property by the Government on behalf of Kenya Broadcasting Corporation. The Plaintiff, through its Managing Director, promptly wrote to the Commissioner of Lands, drawing his attention to the pending proceedings in respect of the suit property and the intention to object to the said proposed acquisition. So when the case came up for hearing on 24th April 2002 it was ordered that it be stood over to the 26th June 2002 for the parties to re-examine their respective positions in the light of the intervening Legal Notices by the government.

Thereafter negotiations were launched to have this matter settled amicably out of court, with M/s Khatib & Co. Advocates inviting the plaintiff's proposals on settlement vide his letter dated 23.5.02 marked PBJ.3(a). However when the case came up for mention on 26th June 2002, the anticipated settlement had not been reached and the case was then stood over generally.

I have taken into account the above averments and submissions. I hold that the plaintiff has satisfactorily demonstrated that it has been interested in prosecuting this case and would have done so were it not been for the various stated intervening facts.

I accordingly dismiss the application dated the 6th June 2003 with costs to the plaintiff.

It is so ordered.

**Date, signed and delivered at Mombasa this 27th August
2003.**

A.G.A. ETYANG

JUDGE