



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 119 OF 1996 (O.S)

MISC APPLICATION NO. 119 OF 1996

PATRICK NJANJA KAMAU.....APPLICANT

VERSUS

ISAAK RIBIRO KAMERE.....RESPONDENT

RULING

This is the Respondents application for an order that suit be dismissed for want of prosecution under Order XVI Rule 5 of the Civil Procedure Rules. The application was served on advocates for respondent M/S Mwicigi Kinuthia & Co Advocates on 2.5.2000 He did not file any replying affidavit or grounds of opposition. Mrs Keya appeared on the hearing date – 19.6.2000 and stated that she had filed Notice of appointment of Advocates and applied for adjournment to file a replying affidavit. The application on adjournment was opposed by applicants counsel and rejected by court Mrs Keya in reply to the application stated that it is the advocate previously on record for respondent who is entirely to blame.

In para 4 of the supporting Wairimu Njugi - counsel for applicant deposes that matter came for hearing on 5.10.98, 21.1.99, 2.3.99, 30.6.99 and in all those instances Respondent s counsel applied for adjournment The record verifies that in those four instances, it is the respondents counsel who applied for adjournment. Case was last adjourn on 14.7.99 and Respondents counsel had not fixed a hearing date by 13.4.2000 when the present application was filed.

Court is entitled to take into account previous adjournment intended to keep the suit alive has even inherent jurisdiction to dismiss the suit – See Mukisa Biscuits Co. Versus West end Distributors (1969) EA 696 = page 699 paras B, C

I am satisfied that Respondent /plaintiff has not been interested in prosecuting the suit

Will plaintiff suffer any injustice if suit is dismissed? The suit is an originating summons in which plaintiff prays for an order under S. 8 of Land control Act that court do extend the time within the applicant may apply for consent of Githunguri Land Control Board for sale of ¼ acre out of land reference no. githunguri/Githunguri/1310. A further order is sought that the Registrar of the High court be authorized to execute the application for consent of Land Control board on behalf of the defendant. Although court has jurisdiction under S. 8(1) of the Land Control Act to extend the period of six months for applying for consent of the Land Control Board, Its discretion can only be exercised where both seller and purchaser are in agreement and both are willing to complete the sale for it would be futile to extend

the period if the vendor will not at the Land Control Board meeting agree to convey the land are if the vendor eventually refuses to execute the transfer documents.

In the present case, affidavit filed show that the vendor disputes that there was nay agreement of sale. He has refused to transfer the land. Even if the orders sought in the originating summons were to be granted it would be futile because Land Control Board cannot give consent against wishes of the vendor or force unwilling seller to transfer the land.

In those circumstances it is futile to keep the suit alive. Consequently, I allow the application with costs to the defendant applicant and dismiss suit for want of prosecution as prayed I give costs of the suit to the defendant.

E. M. Githinji

Judge

21.6.2000

Mrs Nyoike holding brief for Kamere present

Mrs Keya for plaintiff present

1.9.2000

Notice of change of advocates filed by Ndungu K. and Mbuthia advocates for the plaintiff

Signed

Executive Officer

7.5.2001

Mr. Phillip for Kamere and company Advocates for Respondent

Respondents bill of costs fixed for 25th June, 2001.

Notice to issue

Signed

Principal Deputy Registrar

25.6.01

Coram CK. Njai PDR

Court clerk Susan

Mr. Kamere for Respondent

No appearance for applicant

Court: Taxation at 9.15 a.m.

9.15 a.m.

C.K. Njai

Mr. Kamere for the Respondent (holding brief

Mrs Keya for the applicant/Respondent

Court: By consent the Respondents bill of costs against the applicant is taxed and agreed in the all-inclusive sum of shs 69,000/=

C.K. Njai

Principal Deputy Registrar

Upon Reading Application dated 23.7.2001 issue attachment/prohibitory order as prayed

Signed

Deputy Registrar