

REPUBLIC OF KENYA

Sylvester Githua Karanja v Mae Properties Limited

High Court of Kenya at Nairobi

October 23, 2000

Milimani Commercial Courts

T Mbaluto, Judge

October 23, 2000 T Mbaluto, Judge delivered the following ruling

This application has been brought by way of a Notice of Motion under Order 16 rule 5 of the Civil Procedure Rules for the dismissal of the suit for want of prosecution.

The application is based on the grounds that since July 23, 1999, the plaintiff has not taken any steps to prosecute the suit and has also failed to comply with an order requiring him to amend the plaint.

The respondent opposes the application on the grounds that the suit involves considerable sums of money and the respondent stands to suffer considerable loss if the suit is dismissed; that the respondent is very interested in prosecuting the suit and will do so expeditiously; that it is not in the interests of justice to dismiss the suit and that the respondent is prepared to comply with the consent order made on May 5, 1999.

Having carefully considered the matter, I do not think that what the respondent has stated in response to the application really answers the issues raised in the application. The first issue is of delay. This suit was filed more than 5 years ago. Owing to the plaintiff's inaction, it has not progressed beyond the plaint. Meanwhile the plaintiff has been sitting on an order which restrains the 1st defendant from registering a transfer in favour of the 2nd defendant. That interim order is clearly prejudicial to the defendants.

The second issue is the respondent's failure to comply with the terms of a consent order. The order required the respondent to amend his plaint so that the 2nd defendant could be joined in the proceedings. Without the amendment, no progress can be made in the matter. Instead of doing the needful, the respondent has been moving from one advocate to another to the prejudice of all the other parties involved in this suit.

The last step taken in the matter prior to this application was the delivery of the ruling on July 16, 1999. That was almost one year before the filing of this application. Under Order 16 rule 5 of the Civil Procedure Rules:-

"If, within three months after:-

(a) the close of pleadings; or

(b) the removal of the suit from the hearing list; or

(c) the adjournment of the suit generally, the plaintiff, or the court of its own motion on notice to the parties, does not set down the suit for hearing, the defendant may either set the suit down for hearing or apply for its dismissal."

The conduct of the plaintiff/respondent in this matter clearly shows that he is not interested in prosecuting this suit. There is therefore no reason for prolonging the inconvenience and prejudice occasioned to the defendants. The application is accordingly allowed and the suit dismissed with costs for want of prosecution.