



REPUBLIC OF KENYA



KENYA LAW
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Ongatya (Suing on behalf of Henry Angatia Bwire) v Otabat & another (Environment & Land Case 132 of 2015) [2022] KEELC 15721 (KLR) (8 November 2022) (Ruling)

Neutral citation: [2022] KEELC 15721 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 132 OF 2015**

BN OLAO, J

NOVEMBER 8, 2022

BETWEEN

**MELISA ANDAYI ONGATYA (SUING ON BEHALF OF HENRY ANGATIA
BWIRE) PETITIONER**

AND

AUGUSTINE OMELE OTABAT 1ST RESPONDENT

OBARASA OTABAT MUSA 2ND RESPONDENT

RULING

1. This suit was filed in 2015. And other than prosecuting the application seeking to injunct the defendants from interfering with the land parcel No Teso/Chakol/321, which application was dismissed with costs by Kaniaru J on March 10, 2020, the plaintiff has not prosecuted her claim.
2. On June 28, 2022 it was listed for dismissal before Omollo J. The plaintiff's counsel Mr Ashioya however sought the court's indulgence and addressed the Judge as follows:

“I am praying for a last chance to trace my client and confirm if he is still interested in the case” Omollo J indulged counsel and make the following order:

“NTSC cancelled. Matter fixed for hearing on November 8, 2022”

When the matter came up for hearing today, Mr Bogonko counsel for the defendants was ready. I allocated the hearing for 10.45 am and even then neither the plaintiff nor her counsel was present. The court clerk had to summon Mr Ashioya from the Chief Magistrate's Court. He sought time to put in an application to cease acting.

3. Mr Bogonko however sought the dismissal of the suit with costs arguing that the plaintiff is not serious in prosecuting this case which is now 7 years having been filed in 2015.



4. Mr Ashioya is on record seeking the “last chance” to consult his client and find out if she “is still interested in this case.” That was on June 28, 2022. Five (5) months later, it is clear to me that the plaintiff is not interest in prosecuting this case. It was listed for hearing today with the consent of both parties. The plaintiff is absent and there is no explanation for her absence. It is not clear why counsel, having taken a hearing date waited until today to inform the court about his intention to cease acting for the plaintiff. Surely that application ought to have been filed earlier. Order 12 rule 3 (1) of the Civil Procedure Rules provides that:

“If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court.”

From the record herein, there is no “good cause” why this suit should not be dismissed.

5. This suit is accordingly dismissed with costs to the defendant.

RULING DATED, SIGNED AND DELIVERED AT BUSIA ELC ON THIS 8TH DAY OF NOVEMBER 2022 IN OPEN COURT.

B.N. OLAO

JUDGE

8TH NOVEMBER 2022

Mr. Bogonko present

Mr. Ashioya present

Anyasi – Court Assistant

