



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 30 OF 2012**

**LEONARD MUTAL.....PLAINTIFF**

**VERSUS**

**GEOFFREY MUTAL.....1<sup>ST</sup> DEFENDANT**

**ROBERT MUTAL.....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for dismissal of the plaintiff's suit for want of prosecution; no response filed to the application; more than one year having lapsed since the case was last in court; application allowed and the plaintiff's suit dismissed for want of prosecution)***

1. The application before me is that dated 7 November 2017 filed by the defendants pursuant to the provisions of Order 17 Rule 2 (3) and Order 51 Rule 1 of the Civil Procedure Rules, 2010. The principal prayer sought is the dismissal of the plaintiff's case for want of prosecution. Despite the plaintiff's counsel being served with the application, no reply has been made to it, and counsel for the plaintiff/respondent did not also appear at the hearing of this application.

2. I have gone through the record of the case. The suit was commenced by way of a plaint which was filed on 29 October 2012. In the plaint, the plaintiff pleaded that he is the lawful proprietor of the land parcel Nakuru/Olenguruone/Keringet Block 1/53 (Kirobon). He pleaded that the defendants have entered and trespassed into his property and are utilizing it for farming without his consent. In the suit, the plaintiff sought orders for a permanent injunction against the defendants/applicants, general damages for trespass and costs of the suit. Together with the suit, the plaintiff filed an application for injunction which was certified urgent and was to be argued inter partes on a later date.

3. The applicants herein filed defence and counterclaim and also responded to the application for injunction. In their defence, they pleaded that they have been in possession of the suit land for many years. In their counterclaim, they sought orders inter alia that it be declared that the respondent holds the suit land in trust for them.

4. The respondent's application for injunction seems to have been compromised by an order of status quo on 2 May 2013. Later, the applicants filed an application seeking to have the respondent committed to civil jail for violating the order of status quo. That application was heard and a ruling made on 7 November 2014 when the application for contempt was dismissed. On 14 November 2014, the respondent filed an application seeking leave to amend the plaint but the said application has never been canvassed to date. It was to be heard on 19 January 2016, but there was no appearance on the part of M/s Omasa Omosa & Company Advocates, who are on record for the respondent. I directed parties to take another date in the registry but it seems that the plaintiff has not moved the court since then. From the record, the last time the plaintiff's counsel was in court was 18 November 2015.

5. Order 17 Rule 2, upon which this application is premised is drawn as follows :-

***Notice to show cause why suit should not be dismissed***

*(1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.*

*(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.*

*(3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.*

*(4) The court may dismiss the suit for non-compliance with any direction given under this Order.*

6. It will be noted from the above that where a party does not take any step within one year, the other can apply for its dismissal for want of prosecution. In our case, I have already mentioned that the last time counsel for the plaintiff was in court was 18 November 2015 when counsel was given the date of 19 January 2016 for the hearing of the plaintiff's application for amendment of the plaint. I have also mentioned that counsel for the plaintiff did not appear in court on 19 January 2016 . This application for dismissal was filed on 3 October 2017 after the lapse of one year without the plaintiff taking any step in the matter.

7. There is no explanation given by the plaintiff as to why he has not moved his case for more than one year. The plaintiff and his counsel did not also appear at the hearing of the motion despite being duly served. It is apparent to me that the plaintiff has lost interest in the matter and I have little option but to dismiss the plaintiff's suit for want of prosecution with costs to the defendants/applicants<sup>5</sup>.

8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 3<sup>RD</sup> day of May 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

Mr. Andama for the defendants/applicants

No appearance on the part of M/s Omasa Omosa & Company Advocates, for the plaintiff/respondent

Court Assistant :Nelima Janepher

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**