



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC NO. 283 OF 2018

WAKF COMMISSIONERS OF KENYA.....PLAINTIFF

-VERSUS-

VICTOR WAUDI OKOTH.....1ST DEFENDANT

(Sued as the administrator of the Estate of Joseph Okoth Waudi-Deceased)

CASABLANCA HOLDINGS LIMITED.....2ND DEFENDANT

NATIONAL BANK OF KENYA.....3RD DEFENDANT

LAND REGISTRAR, MOMBASA.....4TH DEFENDANT

RULING

(Applications for dismissal of suit for want of prosecution; first application by the 1st and 2nd defendant, second application by the 3rd defendant; applications dismissed)

1. There are two applications before me. The first is the application filed on 28 January 2020 by the 1st and 2nd defendants. The second is the application filed on 8 May 2020 by the 3rd defendant. Both applications seek orders that the plaintiff's suit be dismissed for want of prosecution. The plaintiff has opposed the applications.

2. By way of background, this suit was instituted by way of a plaint, filed on 5 December 2018. It is the pleading of the plaintiff, that she is the registered owner of the parcel of land known as Mombasa/Block XXI/226 (hereinafter, 'the suit land'), and in the year 1992, the suit land was subleased to the 1st defendant. The plaintiff has pleaded that the defendants are undertaking fraudulent and deceitful dealings over the suit contrary to the Wakf Commissioners Act and the tenets and principles of Islamic law. For these reasons the plaintiff seeks *inter alia* orders to permanently restrain the defendants from interfering with the suit land. It will be recalled that the applications herein want to have this suit dismissed for want of prosecution.

3. I have gone through the record. As mentioned, the plaint was filed on 5 December 2018. I can see from the record that on 6 December 2019, the plaintiff took a date of 25 June 2020 for pretrial. Before that date could reach, the two applications were filed.

4. The legal framework on dismissal of suit for want of prosecution is found in Order 17 Rule 2 which provides as follows:-

“2. (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.”

5. I will not say much in this ruling because I can see that by the time the two applications were filed, the plaintiff had already taken steps to

move the matter by taking a date for pretrial. I think it is only after the date of 25 June 2020 that was given for pretrial, and one year lapsed, that the applicants would have been entitled to file applications for dismissal of the suit for want of prosecution. I am not therefore persuaded that one year of inactivity had lapsed to entitle the applicants filed the subject applications.

6. What is not clear to me is whether the date for pretrial was ever served on all parties before the two applications were filed. From the replying affidavit, I can see that counsel for the 1st and 2nd defendants was served with the mention notice after they had already filed their application on 28 January 2020. It is not very clear to me when, if at all, counsel for the 3rd defendant was served. The applicants, cannot be held at fault for thinking that the plaintiff had gone to sleep thus their applications. For this reason, in as much as I dismiss the two applications, I will not make any order as to costs.

7. Orders accordingly.

DATED AND DELIVERED THIS 21ST DAY OF MAY 2021.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA