



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC. NO. 119 OF 2014

BARNABAS OMONDI WANGA.....PLAINTIFF

VERSUS

JOAN ATIENO OWINO.....DEFENDANT

RULING

1. Barnabas Omondi Wang, the Plaintiff, seeks through the notice of motion dated 19th December 2017, to have the order of 15th December 2017 dismissing the suit be set aside and the suit reinstated. The application is based on the seven (7) grounds on its face and supported by the affidavit sworn by the Plaintiff on the 19th December 2017. The gist of the Plaintiff's case as discerned from the said grounds and affidavit is that the delay in taking steps to prosecute the case was occasioned by the Defendant's offer of an out of court settlement which has however not materialized. That the Defendant last offer was in the year 2017 when she offered a property at Segga Market for exchange with the suit land but it was declined by the Plaintiff.
2. The application was served upon the counsel on record for the Defendant on the 17th January 2018 as confirmed through the affidavit of service sworn on the 31st January 2018 by Daniel Roro Ochieng Nyangwara.
3. The application came up for hearing on the 17th April 2018 in the presence of Mr. Mweisigwa and Kowino, learned counsel for the Plaintiff and Defendant respectively. The counsel for the Plaintiff moved the court to grant the application as prayed as no replying papers have been filed. The counsel for the Defendant informed the court that the parties were negotiating and would be filing a settlement in seven days. The court encouraged the parties to continue with the negotiations and file a written consent if any, before the date fixed for the ruling.
4. The main issue for consideration is whether the Plaintiff has established a reasonable explanation as to why no steps aimed at the prosecution of the case were taken for more than one year. Secondly, who pays the costs of the application.
5. The court has considered the grounds on the notice of motion, the affidavit evidence by the Plaintiff and come to the following considerations;
 - a) That the last court appearance before the notice to show cause under **Order 17 Rule 2 of Civil Procedure Rules**, dated 6th November 2017, was issued and served on the parties to come to court on the 15th December 2017, was on the 29th June 2015. That from that date, the parties did not take any step to prosecute the suit for a period of about two years five months.
 - b) That the Defendant's counsel informed the court that the parties were negotiating with an aim of an out of court settlement during the court appearance of the 26th February 2015. That however, the nature and extent of the negotiations were not given and no correspondence on the progress was shared with the court until during the hearing of the show cause proceedings.
 - c) That even though no reply has been filed to the Plaintiff's notice of motion dated 19th December 2017, the court find that no new facts have been disclosed in the application that would explain why no steps were taken for more than one year to prosecute the case. That the facts about the negotiations had already been given during the hearing of the 15th December 2017 and found insufficient to explain the delay. That when parties file their suits in court they and their counsel are obligated under Section 1A (2) of Civil Procedure Act Chapter 21 of Laws of Kenya and Section 3 (3) of Environment and Land Court Act No. 19 of 2011, to ensure such matters are heard and determined expeditiously. That the out of court negotiations and settlements are always welcomed by the court but should not be the reason for undue delay of the prosecutions of the case. That where for good reasons the parties and or counsel find that their negotiations are likely to result to delays of more than one year, such parties and or counsel are better of moving the court, possibly through mentions for appropriate directions to avoid falling prey to the provisions of **Order 17 Rule 2 of the Civil Procedure Rules**.

6. That following from the foregoing, the court finds no merit in the notice of motion dated 19th December 2017 and the same is dismissed with no orders as to costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 3RD DAY OF OCTOBER 2018

In the presence of:

Plaintiff Absent

Defendant Absent

Counsel Mr. Mweisigwa for the Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE