

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 521 OF 2015

CHARLES WAMBUGU GITONGAPLAINTIFF

VERSUS

BAKHRESA GRAIN MILLING (K) LIMITED.....DEFENDANT

RULING

The Defendant filed the application dated 04/10/2019 seeking to have the suit dismissed for want of prosecution. In the alternative, it sought orders that the Plaintiff's suit be struck out with the costs. The application was made on the ground that since the filing of this suit, no steps had been taken to prosecute it. The application was supported by the affidavit of Yislam Mohamed Saariy, the Defendant's Operations and Country Manager sworn on 04 /10/2019. Mr. Saariy deponed that the matter was last in court on 02/07/2015 before the Honourable Justice Mutungi and since then, no further steps had been taken by the Plaintiff who has the primary duty to progress his case. He further deponed that the delay was occasioning and continues to occasion the Defendant unnecessary expense and prejudice. He contended that the filing of the suit was motivated by ulterior motives other than the pursuit of justice. He deponed that the Defendant is the legitimate and indefeasible proprietor of the leasehold interest in the property known as land reference number (L.R. No.) 29455 (formerly L.R No. 21185) located on Mombasa Road, and that the property was initially comprised in Grant Number I.R 67143 registered on 6/10/1995. He further deponed that various parties including the Plaintiff made their representations before the National Land Commission (NLC) through memoranda on the dispute over ownership of the suit land following which NLC rendered a determination on 14/11/2016 upholding the Defendant's title. Mr. Saariy annexed a copy of the NLC ruling and deponed that this suit is scandalous for the reason that the Plaintiff does not have any legally recognizable interest over the suit land capable of being protected by the law. He urged the court to dismiss the suit.

The court has considered the application. The question for determination is whether the suit should be dismissed. Five years have elapsed since the Plaintiff made any effort to prosecute this case. Order 17 Rule 2 of the Civil Procedure Rules provides that if a suit is pending before a court and no steps are taken by either party for one year then the court on its own motion or on the application of a party, may make an order for its dismissal for want of prosecution. A five year delay is inordinate. The interest of justice lies in dismissing the suit for want of prosecution with costs to the Defendant.

DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF MAY 2021.

K.BOR

JUDGE

In the presence of: -

Mr. Botany Mwamuye for the Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff