

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC PETITION NO. 17 OF 2017

RASHID KHAMISI MWAKIREMBO & 5 OTHERS.....PETITIONERS

-VERSUS-

NATIONAL HOUSING CORPORATION.....RESPONDENT

RULING

(Application by the respondent for dismissal of suit for want of prosecution; application unopposed; matter inactive for a period of more than 2 years; application allowed; petition dismissed.)

1. The application before me is one dated 6 August 2020 filed by the respondent to this petition. The respondent seeks an order for the dismissal of this petition for want of prosecution. The grounds for the application are that the petitioners filed a petition together with a chamber summons application on 24 July 2017, which application was heard and determined on 28 February 2018. It is averred that neither the petitioners nor their advocate have been keen to prosecute the petition as from 28 February 2018, making it more than two years since the matter was last in court. The respondent further states that the delay is an indication that the petitioners have lost interest in prosecuting the petition, consequently unjustly prejudicing the respondent. The application is supported by the affidavit of Augustus Wafula, counsel for the respondent. He has reiterated the grounds on the application and further deposed that it is in the interest of justice that litigation should come to an end.

2. The application was duly served upon the petitioners' advocate but no response was filed.

3. Looking at the court records, it is indeed true that the matter was last in court on 28 February 2018, when my sister Omollo J read the ruling dismissing the petitioners' chamber summons application, which was one for injunction. Since then, the petitioners have not taken any step to prosecute the petition.

4. Despite this being a constitutional petition, I think the provisions of Order 17 Rule 2 of the Civil Procedure Rules, on the dismissal of suits for want of prosecution, are apt to be applied. That law is drawn 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 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. It is discernible from the above mentioned provision that the threshold for dismissing a suit for want of prosecution is one year of inactivity of the suit by either party. This matter has been inactive since 28 February 2018. It was the duty of the petitioners to prosecute their case to its logical conclusion, but after two years of inactivity, the only assumption I can make is that the petitioners have lost interest. Indeed, they appear to have lost interest once their application for injunction was dismissed. I have no reason not to allow this application and it is hereby allowed. The petition dated and filed on 24 July 2017 is hereby dismissed with costs to the respondent.

6. Orders accordingly.

DATED AND DELIVERED THIS 5TH DAY OF MAY 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA