

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 6 OF 2014

ALLAN KIMEU KIVUVA (Suing as the legal representative of the Estate of

KIBUBA MWIKYA MUSYOKI (deceased).....PLAINTIFF

VERSUS

LAWRENCE KILEE KITHONGO.....1ST DEFENDANT

DANIEL KITHONGO.....2ND DEFENDANT

ESTHER MWIKALI KITHONGO.....3RD DEFENDANT

RULING

1. In the Notice of Motion dated 20th July, 2020, the Defendants have sought for the following reliefs:

a. That the suit be dismissed for want of prosecution by the Plaintiff/Respondent.

b. That costs of this Application be provided for.

2. The Application is supported by the Affidavit of the Defendants' advocate who has deponed that the Plaintiff has not bothered to set down the matter for directions or for hearing and that it is over three (3) years since this suit was last in court.

3. According to the Plaintiff's advocate, it is the Defendants who invited the Plaintiff to fix dates the last time the matter was fixed for directions in the years 2014 and 2017 and that the suit should be dismissed for want of prosecution.

4. The Affidavit of Service shows that when the Defendants' advocate attempted to serve the Plaintiff's advocate with the Application, he was informed that the said advocate had passed on. The Defendants' advocate deponed that the Application and the hearing notice was served personally on the Plaintiff at his home in Matetani in Kangundo, Machakos County.

5. The record shows that after this suit was filed in the year 2014, it came up for mention on 28th January, 2014; 16th February, 2017 and 8th October, 2018. On all the three occasions, neither the Plaintiff nor their advocate were in court. Indeed, the Plaintiff has never taken any action in this matter since the year 2014 when the matter was filed.

6. Although the Plaintiff was made aware of the Application dated 20th July, 2020, he did not bother to respond. Having gone through the record, it is my finding that no reason has been given as to why this suit has not been fixed for hearing or pre-trial directions taken since 8th October, 2018 when the Defendants' Application dated 6th April, 2018 was allowed.

7. For those reasons, I allow the Application dated 20th July, 2020. This suit is dismissed with costs for want of prosecution.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 11TH DAY OF JUNE, 2021.

O. A. ANGOTE

JUDGE