

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 164 OF 2016

ABRAHAM KAMAKIL

HELLEN KAMAKIL.....PLAINTIFFS

VERSUS

KIPTURGO AMDENY.....DEFENDANT

RULING

1. This is a Ruling on an application that was made earlier today by counsel for the plaintiffs to adjourn the matter from today's hearing. The application was opposed by the counsel for the defendant who in turn asked the court to dismiss the suit for non-attendance of the plaintiffs. The court retired to the chamber to consider the issues and the circumstances of both parties.

2. The law regarding hearing and consequences of non-attendance of parties in court is governed by **Order 12** of the **Civil Procedure Rules, 2010** as amended in **2020**. I will consider the relevant Rules for purposes of this Ruling. **Order 12 Rule 3(1)** provides that "if on the day fixed for hearing, after the suit has been called out for hearing outside the court, only the defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court". **Subrule 2** regards a case where the defendant admits part of the claim in which case the court shall give judgment against the defendant on the admission and dismiss the plaintiff's case. It is upon this legal background that the court considers the application before it this morning.

3. The plaintiffs' counsel sought an adjournment to contact his clients for the last time and avail them in court or prepare them for hearing (so to state). He requested for that to be in two weeks' time. He stated that he was not in touch with his clients since the last time the case was in court, and that was on **1st July, 2021** when today's hearing date was taken. He thus pleaded with the court to give the plaintiffs one last chance.

4. The defence opposed the application for adjournment. He stated through counsel that no good reason had been advanced for the adjournment to be merited. He stated further that the plaintiffs have never attended court four times now. He also noted that this is an old matter, a **2015** one, which should be out of the way. He also noted that the plaintiffs are in possession of the property in dispute and that perhaps explains why they are reluctant to proceed with the matter. He then indicated that the defendant had travelled all the way from Baringo for the hearing today despite the fact that he is an old man.

5. I have carefully considered the arguments by both counsel and looked at the law that I have re-produced above. I have also perused the court record and I note that it is true as submitted by the defence that the record shows that the plaintiffs have never attended court the last three times and the court has accommodated them. It may be true that counsel has lost touch with his clients. However, there is no material placed before the court to show the various attempts made by counsel since the time the matter was in court to contact his clients. Even so there is no explanation as to why they have previously not attended court. The submission that counsel lost touch with them only three months ago is not convincing to the court. Additionally the submissions that the counsel be given two weeks to decide whether to cease acting for the plaintiffs or not is not merited because no explanation has been given why that attempt or step could not be taken before today.

6. I have looked at the pleadings and note that the defendant admits no part of the claim. He has been attending court as and when required.

7. Consequently I find no good cause for me to put on record to have this matter adjourned. I thus dismiss plaintiffs' suit with costs to the defendants. I also direct that the defendant proceeds with his counter-claim.

It is so ordered.

Dated, signed and delivered at Kitale on this 29th day of September, 2021.

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.