



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 41 OF 2019

GEORGE GIKUBU MBUTHIA..... PLAINTIFF

VERSUS

MOHAMMUD SHEIKH HUSSEIN.....1ST DEFENDANT

CHIEF LAND REGISTRAR..... 2ND DEFENDANT

GARAM INVESTMENT AUCTIONEERS..... 3RD DEFENDANT

GULF AFRICAN BANK LIMITED..... 4TH DEFENDANT

SAC(K) LIMITED..... 5TH DEFENDANT

RULING

1. Coming up for determination is an issue of the Notice to Show Cause why this suit should not be dismissed. The background of this matter is that the suit was filed contemporaneously with an application dated 12.2.2019 where the Plaintiff was seeking injunctive orders against the Defendants. The said application was dismissed on 13.2.2020 for want of prosecution as the Plaintiff was absent yet the date had been set in his presence. Thereafter, the Plaintiff lodged another application dated 12.3.2020 seeking the following orders; “ *The 2nd Defendant is frustrating the enforcement of decree of conveyance, the Honourable court stay the pre-trial proceedings, in the alternative, mark the case as withdrawn and no orders as to costs*”. This application too was dismissed for want of prosecution on 21.7.21. It is again noted that the Applicant was aware of the aforementioned date.

2. The court had then proceeded to issue a notice to show cause on 21.7.21 and the matter was then scheduled for 21.10.2021. Come the date of 21.10.2021 and the explanation offered by the Plaintiff is that he had filed another application. I have seen the latest application dated 8.10.2021 whereby the Plaintiff seeks orders to set aside the orders given on 21.7.2021.

3. I am inclined to find that the application dated 8.10.2021 was filed to circumvent the Notice to show cause proceedings, otherwise why was the application not filed soon after the orders of 21.7.2021 were given. However, noting that in the dismissed application dated 12.3.2021, the Applicant had intended to withdraw the suit, the court will grant him audience in the following terms;

1) The applicant is to state categorically whether he will withdraw the suit.

2) If the answer to point 1) is not in the affirmative, then the suit is to be set down for both pre-trial and hearing forthwith and the court will not entertain any applications in the intervening period.

3) The application dated 8.10.2021 is *suo moto* dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF NOVEMBER, 2021 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Gikumbu Mbuthia the Plaintiff/Applicant in person

Mwihaki for the 1st Defendant

Mr. Mwaboru holding brief for A. Kamau for the (2nd Defendant)

Court Assistant: Eddel Barasa