

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CIVIL CASE NO.3 OF 2017

JAMES MARTIN NAKOLA.....PLAINTIFF

VERSUS

KENYA LIVESTOCK FINANCE TRUST.....1ST DEFENDANT

RONBOY AUCTIONEERS.....2ND DEFENDANT

RULING

1. Pursuant to the provisions of section 3A of the Civil Procedure Act (Cap 21) Laws of Kenya, Order 17 rule 2 (3) and Order 51 of the Civil Procedure Rules, the defendants have sought through their notice of motion dated 1st March 2019, orders for the dismissal of the instant suit for want of prosecution and that the costs of this application to be borne by the plaintiff.

2. The application is supported by five grounds that are set out on the face of the notice of motion. It is also supported by a 14 paragraphs supporting affidavit of the chief executive officer of the first defendant (Stephen Ndungu Kinyi). The major grounds in support of the application are as follows. The plaintiff filed a suit in the Environment and Land Court on 2nd February 2017, which suit was subsequently transferred to this court. Ever since the suit was transferred to this court, the plaintiff has never taken any step to prosecute this suit, which is now two years down the line. There is inordinate delay in prosecuting this suit.

3. Furthermore, in the 14 paragraphs supporting affidavit, the following are the major averments. On 16th of July 2012 the plaintiff was advanced a loan of Kshs 200, 000 at an annual rate of interest of 15 per cent. The plaintiff had charged his property land reference No. Cis-Mara/Nikareta/14 as security. Following the advancement of the loan, the plaintiff defaulted in the loan repayments, which forced the first defendant to instruct the second defendant to attach and sell the charged property. Before the second defendant could sell the attached property, the plaintiff filed the instant suit to stop the first defendant from selling it. The plaintiff in his plaint blamed bad weather for his failure to service the loan, leading to immense loss to the first defendant. Finally, the chief executive officer has averred that it is now over two years since the filing of this suit and the plaintiff has not taken any steps to prosecute the suit.

4. The defendants served a hearing notice upon counsel for the plaintiff. The affidavit of service dated 20th June 2019 is clear in this regard.

5. As a result, the hearing of this instant application proceeded in the absence of the plaintiff.

6. I find that the affidavit evidence of the defendants is credible. I therefore find that the plaintiff has for over two years not taken any steps to prosecute the instant suit. I therefore find that the delay is inordinate and that mitigation must come to an end.

7. In the light of the foregoing considerations, I find that this application is merited and I therefore dismiss this suit for want of prosecution.

8. There will be no order as to costs.

Ruling signed, dated and delivered in open court at Narok this 11th day of July 2019 in the absence of the plaintiff and in the presence of Mr. Kadet for the defendants.

J. M. Bwonwonga

Judge

11/7/2019