



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**

**ELC NO. 123 OF 2017**

**ERIC MAINA & RUTH WAMBUI T/A SPACEMAN IT MART & 8 OTHERS.....PLAINTIFFS**

**VERSUS**

**KENYA PORTS AUTHORITY PENSION SCHEME.....DEFENDANT**

**RULING**

(Application for dismissal for want of prosecution; Order 17 Rule 2; two years having lapsed since the last action was taken by the plaintiffs; no reply to the application; clear that the plaintiffs have lost interest in the suit; suit dismissed for want of prosecution with costs to the defendant)

1. The application before me is that dated 6 June 2019 filed by the defendant. It is an application brought pursuant inter alia to the provisions of Order 17 Rule 2 (1) and (3) of the Civil Procedure Rules, 2010. The principal prayer is for an order that this suit be dismissed for want of prosecution. It is the contention of the applicant that the plaintiffs have lost interest in this suit and the same ought therefore to be dismissed for want of prosecution.

2. I have gone through the record. I observe that this suit was commenced through a plaint which was filed on 10 April 2017. The plaintiffs/respondents pleaded to be tenants of the applicant on the Plots Nos. 149, 150 and 151/XX/MI (the suit premises). The respondents filed this suit to stop a threatened eviction by the applicant as it was their claim that an eviction notice issued to them was illegal. They sought orders to permanently restrain the applicant from interfering with their quiet possession of the suit premises. Together with the suit, the respondents filed an application for injunction to stop their threatened eviction pending hearing of the suit. The application was placed before the duty Judge on 10 April 2017 and interim orders issued, with the matter being scheduled for *inter partes* hearing on 26 April 2017. On that day the court was not persuaded to extend the interim orders and directed the application to be heard *inter partes* on 11 May 2017. I have not seen any record of the matter in court on 11 May 2017 and indeed nothing happened in the matter until the defendant filed this application. It will therefore be noted that prior to the filing of this application, the last action in the suit was on 26 April 2017.

3. Order 17 Rule 2 upon which this application is premised is drawn as follows :-

Notice to show cause why suit should not be dismissed [Order 17, rule 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 should not be 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.

4. It will be seen from the above that where a suit lays inactive for a period of one year, the court is at liberty to issue a notice for its dismissal (sub-rule 1), or a party may apply for its dismissal (sub-rule 3). There is no question that this suit has been inactive since 27 April 2017 which to the date of filing this application was a period in excess of two years. The defendant is therefore perfectly entitled to apply for the dismissal of this suit for want of prosecution.

5. No reply has been filed to this application and thus no reason has been given by the respondents why this suit ought not to be dismissed. It is clear that the respondents have lost interest in the suit.

6. I therefore allow this application and order that this suit be dismissed for want of prosecution with costs to the defendant.

7. Orders accordingly.

**DATED and delivered this 21<sup>st</sup> day of April ,2020**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**