



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.193 OF 2013

CHRISTINE CAREN NYANGAGA.....PLAINTIFF

VERSUS

MESHACK ODUOR NDOLODEFENDANT

RULING

1. **Meshack Oduor Ndolo**, the Defendant, applied for this suit to be dismissed with costs for want of prosecution vide notice of motion dated 14th June 2016. The application is based on eight grounds on its face and is supported by the affidavit of Munyua Ezekiel Njagi advocate, sworn on the 14th June 2016.
2. The application is opposed by the Plaintiff through the replying affidavit sworn on 21st October 2016.
3. The application came up for hearing on the 26th October 2016 when Mr. Munyua and Rodi, learned counsel for the Defendant and plaintiff respectively, made their oral rival submissions.
4. The following are the issues for determination;
 - a) Whether the Plaintiff has taken more than one year from the last court action without taking steps to prosecute her case.
 - b) Whether the suit should be dismissed for want of prosecution
 - c) What orders to issue.
 - d) Who pays the costs.
5. The court has considered the grounds on the notice of motion, affidavit evidence, counsel oral rival submissions, record of the court and concluded as follows;
 - a) That the application dated 14th June 2016 was filed in court on the 16th June 2016, and on the same date, a hearing date was fixed for 26th October 2016.
 - b) That before the filing of the notice of motion and fixing a date for its hearing, the last court action on the matter was on 20th August 2015 when the court delivered its ruling in respect of the Plaintiff notice of motion dated 18th July 2013. That it is therefore clear that the Defendant notice of motion dated 14th June 2016, and filed in court on 16th June 2016 was filed prematurely as one year from 20th August 2015 was to lapse on or about 19th August 2016.

c) That without addressing the other issues raised by counsel for the parties, the court finds the notice of motion dated 14th June 2016 must fail for it was filed before one year could lapse from 20th August 2015.

6. That the notice of motion dated 14th June 2016 and filed on 16th June 2016 is for reasons set out above dismissed with costs to the plaintiff.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 8TH DAY OF FEBRUARY 2017

In presence of;

Plaintiff	Absent
Defendant	Absent
Counsel	Mr. Rodi for the Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

8/2/2017

8/2/2017

S.M. Kibunja Judge

Oyugi court assistant

Parties absent

Mr. Rodi for the Plaintiff

The Defendants counsel are absent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

8/2/2017

Court: Ruling dated and delivered in open court in presence of

Mr. Rodi for the Plaintiff only.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

8/2/2017