



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
ENVIRONMENT & LAND COURT
ELC CASE NO.228 OF 2014

PETER OMOLO AGAK.....PLAINITFF

VERSUS

GILBERT ONYANGO OMOLO.....DEFENDANT

RULING

1. **Gilbert Onyango Omolo**, the Defendant filed the notice of motion dated 20th November 2015 seeking to have the suit filed by the plaintiff dismissed with costs for want of prosecution. The plaintiff, **Peter O. Agak**, had commenced this suit through the plaint dated 24th July 2014 and filed in court on 9th September, 2014. The Defendant was served with the summons and filed the memorandum of appearance through M/S Nyatundo & Co. Advocate dated 17th September 2014 on the same date. The Defendant filed the defence, list of documents and statements on 8th October 2014 and served the plaintiff on 18th October 2014 as confirmed by **George Ndira** in his affidavit of service sworn on 29th January 2016.
2. The notice of motion dated 20th November 2015 was served on the plaintiff on 10th December 2015 as confirmed in affidavit of service sworn by George Ndira on 18th

January 2016. The notice of motion indicated the hearing date as 19th January 2016. The plaintiff did not attend the court for hearing of the application and had not filed any replying affidavit or grounds of opposition to the notice of motion. M/S Kasiara advocate for the Defendant submitted that more than one year had passed from the time the pleadings had closed to the time the application was filed and that plaintiff had not taken any steps to prosecute this case. The court then adjourned the hearing to 8th February 2016 to allow counsel confirm the dates of service of the defence and other documents to the plaintiff. The affidavits of service referred to above were subsequently filed.

3. The court has considered the grounds on the application and submissions by counsel and come to the following determinations:
 - a) That the application is brought under **Order 17 Rule 2 (1) and 3 of Civil Procedure Rules** which allows a party to move the court for dismissal order where one year passes from the last action without any steps towards prosecuting the case.
 - b) That the pleadings in this case closed after the filing and service of the Defendant's defence, list of documents and statements. The documents were served on the plaintiff on 18th October 2014. He did not file, a reply to the defence.
 - c) That the plaintiff, though served with the notice of motion dated 20th November 2015 has not filed

any documents in response nor come to court to explain why he has not taken any steps to prosecute his case for over one year from the date the

pleadings closed. The Defendant's application therefore stands unopposed and has merits.

4. That the Defendant's notice of motion dated 20th November 2015 is allowed as prayed and the plaintiff's suit commenced through the plaint dated 24th July 2014 is dismissed with costs for want of prosecution.

It is so ordered.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

Dated and delivered this **9TH day of MARCH 2016**

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mrs. Stausi for Nyatundo & Co Advocate for Defendant.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

9/3/2016

9/3/2016

S.M. Kibunja J.

Oyugi Court Assistant

Parties absent

Mrs Stausi for Nyatundo for Defendant/Applicant

Court: Ruling Delivered in Open court in presence of Mrs Stausi for Nyatundo for Defendant.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

9/3/2016