

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

E.L.C. NO 101 OF 2014

FORMERLY KERUGOYA 101 OF 2014

NDICHU KAHUHA.....PLAINTIFF/RESPONDENT

VERSUS

PETER NJERU STANLEY.....DEFENDANT/APPLICANT

RULING

1. This is an application by the defendant/applicant to dismiss the notice of motion filed by the defendant through his counsel dated 10th March 2014. In support of his application, the plaintiff/respondent has annexed a replying affidavit sworn to by the plaintiff/respondent.
2. According to the plaintiff/applicant, the defendant is in contempt of a court order issued by this court (*Ong'udi, J*) on 22nd December, 2011. By that order, the defendant was restrained from alienating, transferring or trespassing or in any manner interfering with the plaintiffs peaceful possession of the suit land number Nthawa/Riandu/1235 pending the hearing and determination of the suit.
3. The plaintiff/applicant has stated that the defendant was served with this order. He has stated that the defendant should not be allowed to benefit from his own conduct of destroying the house, goods and crops. There was a court order in force stopping him from doing so. The application sought dismissed is that of the defendant dated 10th March 2014. It was filed after the injunctive order was issued.
4. I have perused the replying affidavit of the plaintiff/respondent and its annexes. It is clear that the motion seeking to dismiss the originating summons has been lying in court un-prosecuted since 10th March, 2014. The delay is inordinate.
5. Additionally, it seems that the defendant has acted in breach of the temporary injunction in destroying the properties of the plaintiff.
6. In view of the foregoing reasons, the plaintiff's application is hereby granted. I therefore order that the defendant's notice of motion be and is hereby dismissed.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **7th** day of **MAY 2015**.

In the presence of Mr. Muraguri for the defendant and in the absence of Mr. Mugo for the Plaintiff/Respondent.

Court clerk Mr Nyaga

J.M. BWONWONGA

JUDGE