REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL SUIT NO. 387 OF 2011

LETEMA OLE SILALEI SIKAMBA ……..PLAINTIFF

VERSUS

STANLEY PARIT MBUKOI…….....1ST DEFENDANT

MAILUA GROUP RANCH……...2ND DEFENDANT

RULING

1. The application dated **7th February, 2014,** brought pursuant to the provisions of **Section 3A** of the **Civil Procedure Act, Order 17 rule 2(3), Order 51 Rule 1** of the **Civil Procedure Rules** seeks dismissal of the suit for want of prosecution. It is premised on grounds that the applicant has failed to take a step to prosecute the suit, a year down the line after its institution.
2. The said application is supported by an affidavit deponed by **Sigei K. Hillary** an advocate in conduct of the matter who states that the plaintiff/respondent herein filed this suit with an application by way of Notice of Motion seeking to injunct and inhibit the defendant/applicant from dealing in the property belonging to the 1st respondent/applicant. The application was dismissed. Although the plaintiff served the defendant with the plaint, verifying affidavit and a list of documents, no summons to enter appearance were extracted for service upon the applicant. Failure to prosecute the suit, a year having lapsed was evidence of loss of interest in the same. Terming the suit an abuse of the court process, he stated that it was in the interest of justice to have it dismissed.
3. It took the respondent /plaintiff four months to file a response to the application. In a replying affidavit dated **6th June, 2014** admitted by leave of court in the interest of justice, **Letema Ole Silalei Sikamba** the respondent/plaintiff dispones that the ruling in the application was delivered on **26th April, 2013** having filed a notice to appeal on **10th May, 2013.** Thereafter, he abandoned the appeal intending to proceed with trial. He reiterated his intention to have the suit prosecuted.
4. Having considered rival submissions by both counsels and further, having perused the court record I do note that there is a statement of defence dated **3rd February, 2012** on record. The ruling to the application seeking injunction orders was delivered on the **26th April, 2013.**
5. On the **10th May, 2013,** a notice of appeal was duly filed in court. On the **24th May, 2013,** a letter seeking to be provided with copies of proceedings and the ruling was received at the registry. **Nine (9) months** have elapsed from then. The fact that it took the respondent four **(4) months** to respond to the application is also evidence of lack of seriousness on the respondent's part.
6. However, I do note that this being a land matter which is usually emotive in nature, it is in the interest of justice that the case be heard on merit. I therefore direct the respondent/plaintiff to

cause the case to be prosecuted and determined within **180 days** from today. In default the suit to stand dismissed.

7. Costs of the application in any event shall be paid by the respondent.
8. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 8TH day of SEPTEMBER, 2014.

L.N. MUTENDE

JUDGE