



**REPUBLIC OF KENYA**

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

**AT MOMBASA**

**ELC NO. 211 OF 2013**

**PRESBYTERIAN CHURCH OF**

**EAST AFRICA – PWANI PRESBYTERY.....PLAINTIFF**

**VERSUS**

**HAKIKA TRANSPORT SERVICES LIMITED.....1<sup>ST</sup> DEFENDANT**

**JAMAL ABED.....2<sup>ND</sup> DEFENDANT**

**ABDULHAKIM ABED.....3<sup>RD</sup> DEFENDANT**

**MOHAMED ABED.....4<sup>TH</sup> DEFENDANT**

**TRANSPARES LIMITED.....5<sup>TH</sup> DEFENDANT**

**RULING**

*(Application to dismiss suit for want of prosecution; suit dormant for 7 years; no reply to the application; clear that the plaintiff has lost interest; suit dismissed for want of prosecution)*

1. The application before me is that dated 30 July 2020 filed by the 1<sup>st</sup> – 3<sup>rd</sup> defendants (erroneously indicated as interested parties). The application seeks the dismissal of this suit for want of prosecution. Despite being served, no response has been filed to the application.
2. I have considered the application and gone through the record. I note that this suit was commenced by the plaintiff through a plaint filed on 20 September 2013 against the five defendants. The plaintiff averred to be the owner and in occupation of the land parcel identified as LR No. 28405 measuring 9.6 Ha having purchased it from Juma Jefwa Mboe and Sidi Chengo Nganzo. They pleaded that they had a dispute with the vendors which led to the filing of the suit Mombasa HCCC No. 139 of 2011 which at the time of filing this case, was said to be pending judgment but that there is an order of injunction in favour of the plaintiff. The plaintiff pleaded further that on 9 September 2013, the defendants violently trespassed into the suit land and demolished the perimeter fence. In the suit the plaintiff sought a declaration that the defendants have no right to the property.
3. The last entry in the file is of 25 September 2014 before Mukunya J, where it was recorded that an application be served on the other parties and a convenient date taken in the court registry.
4. The supporting affidavit to this motion is sworn by Abdulhakim Abeid Khamis, the 3<sup>rd</sup> defendant. He has deposed that that the plaintiff obtained judgment in the suit Mombasa HCCC No. 139 of 2011 against the vendors but that judgment has since been set aside. He has pointed out that no steps to prosecute this case have ever been taken since 2013.
5. I already mentioned that no response has been filed to this application. The record speaks for itself. The last time the matter was in court is 25 September 2013. It is now 7 years ago.
6. Order 17 rule 2(3) allows a party to apply for the dismissal of a suit that has been dormant for one year. This has been dormant for seven good years. The fact that no response has been filed to this application is informative that the plaintiff has lost interest in this case. There is no need for this case to hang around the court shelves without hope of being prosecuted.

7. I allow this application. The result is that the plaintiff's suit is dismissed for want of prosecution with costs to the defendants.

8. Orders accordingly.

**DATED AND DELIVERED THIS 15TH DAY OF OCTOBER 2020**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**