



**REPUBLIC OF KENYA**

**High Court at Bungoma**

**Civil Suit 64 of 2010**

**EUNICE AKETCH OKUMU (suing on her behalf and estate of the late WEKULO  
SAISI.....PLAINTIFF**

**~VRS~**

**EVANS WANYAMA**

**JUMA.....DEFENDAN**

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**RULING**

On 6/7/2010 the Plaintiff (suing on behalf of the estate the deceased Wekulo Saisi) brought this suit against the Defendant who on 18/3/2001 bought 2.20 Hectares of the deceased's 7.64 Hectares comprised in land parcel no.E.Bukusu/E.Sang'alo/1632 for Ksh.325,000/=. He claimed that by the time the deceased died the transaction was incomplete as the full purchase price had not been paid and the consent of the Land Control Board had not been obtained. Yet, after the death the Defendant had fraudulently proceeded to have the land subdivided and the portion transferred and registered in his name. The suit sought the cancellation of the registration. The Defendant denied the claim. He admitted having entered into the transaction with the deceased but denied that the transaction was incomplete by the time the deceased died. He denied defrauding the deceased or the estate of the land.

On 2/3/2012 the Defendant brought the present application under Order 17 rule 3 of the Civil Procedure Rules to have the suit dismissed with costs for want of prosecution on the ground that for 1 ½ years the Plaintiff has not set down the suit for hearing. I agree with the Plaintiff that the application was prematurely brought. The suit was not ready for hearing. Preliminary steps under Order 3 rule 2 and Order 11 had not been undertaken. Parties had not exchanged witness statements and exhibits/documents and issues had not been settled, etc. The application has no merit and is dismissed with costs.

Dated, signed and delivered at Bungoma this 1<sup>st</sup> day of October, 2012.

**A. O. MUCHELULE  
JUDGE**