



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 571 OF 2013

JOSIAH MUCHERU B. KIHAREKO.....1ST PLAINTIFF/RESPONDENT

-VERSUS-

ELLEN WAMBUI.....1ST DEFENDANT/RESPONDENT

GLADYS WAIRIMU.....2ND DEFENDANT/RESPONDENT

MARY WAMBUI NJOROGE.....INTERESTED PARTY/APPLICANT

RULING

1. This is the Notice of Motion dated 17th January 2017. It is brought under Section 13 of the Environment and Land Court Act, Order 17 Rule 2 of the Civil Procedure Rules and all other enabling provisions of the law.
2. It seeks orders that this suit be and is hereby dismissed with costs for want of prosecution.
3. The grounds are on the face of the application and are set out in paragraphs a to i.
4. The application is supported by the affidavit of Mary Wambui Njoroge the interested party/applicant sworn on the 17th January 2017.
5. On the 20th June 2017, the court directed the plaintiff/respondent to file his response to the application within fourteen (14) days. On the 18th September 2017, no response had been filed and the court directed the interested party/applicant to file their written submissions.
6. The application is not opposed. I have gone through the court record. The plaintiff/applicant filed this suit vide a plaint dated 15th May 2013. He also filed a notice of motion seeking orders of injunction. To date he has not been ready to prosecute the application to conclusion. Most of the delays have been occasioned by the plaintiff/applicant. The last time the matter was in court prior to the filing of the instant application was on 5/11/14. More than two (2) years had lapsed before the filing of this application.
7. Order 17 Rule 2 (1) of the Civil Procedure Rules provides as follows:-

“In any suit in which no application has been made or steps taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed and if cause is not shown to its satisfaction may be dismiss the suit.”

Order 17 rule 2 (3) provides that:-

“Any party to the suit may apply for its dismissal as provided in sub rule 1”.

8. The plaintiff appears to have lost interest in this matter. I find merit in this application and the same is allowed. I hereby dismiss this suit with costs to the interested party/applicant.

It is so ordered.

Dated, signed and delivered in Nairobi on this 31st day of January 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for Defendants

.....Advocate for the interested party

.....Court Assistant