



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 33 OF 2006

BENARD MUTALI.....PLAINTIFF

VERSUS

PATRICK SILIVARASI PALIDA.....DEFENDANT

RULING

1. The Notice of Motion dated **23rd October, 2018** which has been filed by the plaintiff seeks the following orders:

(a) That the orders made on 23/10/2018 dismissing this suit be set aside and the suit be set down for hearing.

(b) Costs be provided for.

2. The Notice of Motion is brought under provisions of **Section 1A and 1B and Section 3 of the Civil Procedure Act** and it is founded on the grounds set out at the foot of the application and in the supporting affidavit of the applicant.

3. The grounds are that the applicant showed cause as to why the suit should not be dismissed and subsequently set the matter down for hearing on 29/6/2018 on which date the court never sat; that another date was fixed by consent of the parties, it being 23/10/2018; that the applicant desires to call one more witness.

4. The application is opposed by the respondent who filed his replying affidavit on 8/11/2018. His response is that the delay in moving the court for a hearing date within the period set by the court in the order of 15th January 2018 is inordinate and unexplained; that no order was made on 23rd October 2018 dismissing the suit but the same stood dismissed pursuant to the court's order of 15th January 2018; that the application will serve no purposes since the order of 15th January 2018 will remain on the record; that the delay in complying with the order of 15th January 2018 is an indicator that the plaintiff has lost interest in the suit; that he is not the administrator of his deceased wife's estate and even a revival of the suit against him would be futile.

5. I have considered the application and the response. There is no annexure attached to the supporting affidavit to demonstrate that within three months of the order made on 15/1/2018 the plaintiff attempted to set the matter down for hearing to enable its prosecution within 3 months as ordered by the court.

6. Secondly, the respondent is correct in submitting that no order made on 23/10/2018 dismissing the suit because the suit stood dismissed upon the expiry of 90 days from 15th January 2018 according to the order made on the latter date.

7. Thirdly the delay in setting the matter down for hearing within the period set down by the court in its order of 15th January 2018 has not been explained.

8. I agree that the plaintiff has been quite lackadaisical in his prosecution of this suit. The application dated 23/10/2018 clearly has no merit and the same is dismissed with costs to the respondent.

Dated, signed and delivered at Kitale on this 28th day of January, 2019.

MWANGI NJOROGE

JUDGE

28/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Wanjala holding brief for Arunga for plaintiff

Mr. Karani holding brief for Ingosi for defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

28/01/2019