



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 420 OF 2015.**

**PREMIUM PETROLEUM LIMITED.....1<sup>ST</sup> PLAINTIFF**

**BILL ROTICH.....2<sup>ND</sup> PLAINTIFF**

**FLORENCE ROTICH.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**FAMILY BANK LIMITED.....1<sup>ST</sup> DEFENDANT**

**JOSRICK MERCHANTS AUCTIONEERS....2<sup>ND</sup> DEFENDANT**

**RULING**

This suit was commenced by way of a plaint dated 18/5/2015 filed in court on the same day. Contemporaneously with the filing of the plaint, an application seeking to restrain the Defendants from dealing with L.R Number 209/8192/2 ("the Suit Property") was filed under certificate of urgency. The application was certified urgent and heard on the 19/5/2015. The court declined to grant the interim relief sought by the Plaintiff to restrain the auction of the Suit Property which was scheduled to take place on 19/5/2015. The court directed that the application would be heard on 23/6/2015. The Plaintiffs have not taken any steps in the case since then.

Through the application dated 4/7/2017, the 1<sup>st</sup> Defendant sought orders to dismiss the Plaintiffs' case against it for want of prosecution. The application is based on grounds that the Plaintiffs have inordinately delayed to prosecute the matter, as it has been over 2 years since they last took action. The 1<sup>st</sup> Defendant contended that the delay in prosecuting this suit is inexcusable.

The Plaintiffs did not file a replying affidavit to oppose the application and to explain the reasons for the inaction on their part. This court can only make an inference that the Plaintiffs have lost interest in the suit. Order 17 Rule 2 (3) of the Civil Procedure Rules gives the court discretion to dismiss the suit on an application by a party where no step has been taken for one year. The 1<sup>st</sup> Defendant has demonstrated that more than two years have elapsed since the Plaintiffs last took a step in this suit.

The suit against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is dismissed. The 1<sup>st</sup> Defendant is awarded the costs of the suit.

**Dated and delivered at Nairobi this 28<sup>th</sup> day of February 2019.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. A. Kabugu holding brief for Mrs. Mwendwa for the 1<sup>st</sup> Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiffs and 2<sup>nd</sup> Defendant