

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC CASE NO.779 OF 2015

KEN HUT COOPERATIVE SOCIETY LIMITED.....PLAINTIFF

=VERSUS=

CHAMOS AGENCIES LIMITED.....DEFENDANT

RULING

1. The defendant/applicant filed a Notice of Motion dated 31st August 2017 seeking to have the Plaintiff's suit dismissed for want of prosecution on the ground that the plaintiff/respondent has not taken any step for over a year with a view to fixing the suit for hearing. The applicant contends that the respondent had filed an application dated 10th August 2015 which was fixed for hearing on 13th April 2016 but was taken out of the cause list. The applicant states that the respondent has since neglected to take a hearing date for the application and that it has been over two years since the matter was in court and the respondent has not taken any step to have the same prosecuted.

2. The respondent opposed the applicant's application based on a replying affidavit sworn on 20th March 2018. The respondent has indicated the steps it has taken towards prosecution of the pending application. The respondent contends that the application herein is premature since the period of one year stipulated has not elapsed since the last step was taken.

3. I have considered the applicant's application as well as the opposition thereto by the respondent. The only issue for determination is whether the applicant is guilty of non-prosecution of the suit as to warrant its dismissal. Order 17 Rule 2(1) as read with Rule 3 of the civil procedure rules provides that either party can apply to have a suit dismissed if no application has been made or step taken by either party for one year.

4. In the instant case, the respondent had filed a notice of motion dated 10th August 2015. On 24th August 2015, Justice Mutungi directed parties to file written submissions in respect of the application and fixed the matter for mention on 6th October 2015. On the date fixed for mention, the Judge had already been transferred. Parties were advised to take fresh dates at the registry. A fresh date was given for 13th April 2016 but on this date the application was taken out of the cause list. The Deputy Registrar of the court was asked by the respondent to give a mention date for directions. The Deputy Registrar did not respond to the respondent's letter of 8th June 2016. The respondent's lawyer then invited the applicant's lawyer to come to court on 13th December 2016 to fix a date for hearing. This invitation was through the respondents advocate's letter of 5th December 2016. When the respondent's agents went to court on 13th December 2016, they were informed that the court diary was already full. They were advised to await the 2017 diary. Again on 3rd February 2017 the respondent's advocates invited the applicant's advocate to go to court to fix a date for hearing.

5. It is clear from the steps taken by the respondents' advocate that they were keen on prosecuting their pending application. The last time, the respondent's advocates were in court registry seeking to take a date was on 13th December 2016. The court registry duly acknowledged the invitation letter by stamping it. There was also another invitation vide letter of 3rd February 2017. This application was filed on 20th September 2017. The period of one year had not elapsed since the last step was taken. The applicant's counsel seems to be of the view that the one year period is from when the matter was last in court. This is a wrong interpretation of Order 17 Rule 2(1) as read with Rule 3.

I therefore find that the applicant's application is premature. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 14th day of February 2019.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Koki for Mr Muli for defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE