

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ELC LAND CASE NO. E031 OF 2023**

**COUNTY GOVERNMENT  
OF UASIN GISHU .....  
PLAINTIFF/RESPONDENT**

**-VERSUS-**

**THE TRUSTEES ELDORET CHURCHES  
URBAN PROJECT TRUST FUND .....  
DEFENDANT/APPLICANT**

**RULING:**

1. The Defendant/ Applicant filed a Notice of Motion Application dated 28<sup>th</sup> January, 2025 against the Plaintiff/Respondent seeking the following orders: -
  - i. Spent.
  - ii. THAT the Honourable Court be pleased to dismiss this suit for want of prosecution.
  - iii. Costs be granted to the defendant/applicant.
2. The application is premised on the 6 grounds on the face thereof and supported by the Affidavit of Bishop Thomas Kogo, the Chairman of the defendant, sworn on even date.
3. He deponed that the plaintiff filed the suit on 02.06.2023 together with the plaintiff's list of witnesses. Subsequently, the Summons to Enter Appearance and plaint were served on them on 08.01.2024.
4. That upon service of the said documents, their advocates filed a Notice of Appointment of Advocate on 22.01.2024 and

later filed their Statement of Defence on 08.02.2024, which was served on the plaintiff on the same day.

5. He averred that sometimes on 07.03.2024, their advocates on record wrote to the plaintiff's attorney requesting for the list of documents but no response was forthcoming and to date, no such list of documents has been filed in court.
6. It is therefore his claim that over one year and eight months has since lapsed since the filing of the suit, yet the plaintiff/respondent has never taken any steps or action to prosecute the suit. He therefore contends that the suit should be dismissed for want of prosecution.
7. He further avers that it is trite law that suits must be prosecuted within stipulated timelines and thus urged the court to allow the application and dismiss the suit for want of prosecution.
8. Despite the Plaintiff/respondent being duly served with the application and a return of service being filed to that effect, the plaintiff did not file any response to the application. Therefore, the application was not opposed.
9. Further, when the matter came up in court on 02.04.2025, counsel for the plaintiff Mr. Mutai sought leave of 14 days, within which to file their response to the defendant's application, which was granted.
10. On 06.05.2025, Mr. Mutai once again informed the court that they were unable to comply and file a response within the timelines as directed. He again sought more time to enable him get the necessary instructions and comply. This court

once again accommodated the plaintiff and granted them 14 days to file their response.

11. On 23.09.2025, the plaintiff was granted a further 14 days to file and serve their submissions upon service with the defendant's submissions.
12. Despite the numerous opportunities given/extended to the plaintiff to file their response to the present application, no response was filed on their part. The application is therefore deemed unopposed.
13. The application was canvassed by way of written submissions. Only the defendant/applicant filed their submissions dated 22.09.2025, which I have read and considered. Be that as it may, I will proceed to render my decision as hereunder.

**Analysis and Determination:**

14. I have carefully considered the grounds in the Notice of Motion Application, the Supporting Affidavit and the submissions thereto. It is this court's considered opinion that the following issues arise for determination: -
  - i. *Whether the suit should be dismissed for want of prosecution.*
  - ii. *Who shall bear the costs of the Application.*

**i. Whether the suit should be dismissed for want of prosecution;**

15. The applicant herein has sought the dismissal of the plaintiff's suit for want of prosecution. It is their claim that the plaintiff/respondent filed the instant suit on 02.06.2023. That the plaint and summons to enter appearance were served upon them on 08.01.2024 and they thereafter filed a statement of defence on 08.02.2024. They thus contend that no step has been taken by the plaintiff/respondent to prosecute the suit for over 1 year 8 months, hence the same should be dismissed for want of prosecution.
16. Order 17 Rule 2 (1) and (3) of the Civil Procedure Rules provides the legal framework on dismissal of suits for want of prosecution. The section provides as follows: -
- (1) In any suit in which no application has been made or step 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 dismiss the suit.**
- (3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.**
17. The import of the above legal provision is that a suit qualifies to be dismissed for want of prosecution where no application has been made and/or no step has been taken in the suit by either party for at least one year before an application can

be made *seeking dismissal* of the suit, either by the court on its own motion or by an application by either party.

18. In **Argan Wekesa Okumu vs Dima College Limited & 2 others [2015] eKLR** the court considered the principles for dismissal of a suit for want of prosecution and stated as follows:-

***“The principles governing applications for dismissal for want of prosecution are well settled and have been established by a long line of authorities. The Applicant must show that the delay complained of is inordinate, that the inordinate delay is inexcusable and that the Defendant is likely to be prejudiced by such delay. As such the 3<sup>rd</sup> Defendant in this case must meet the burden of proof in seeking the dismissal of the Plaintiff’s case for want of prosecution see the case of Ivita -vs- Kyumbu (1984) KLR 441. Further to this, the decision of whether or not to dismiss a suit is discretionary and this Court must exercise such discretion judiciously. Additionally, each case must be decided on its own facts keeping in mind that a court should strive to sustain a suit where possible rather than prematurely terminating the same.”***

19. I am guided by the provisions of Order 17 Rule 2(1) above and the decision in the Argan Wekesa Okumu (*supra*) in

determining whether the present application is merited and the suit is ripe for dismissal for want of prosecution.

20. Before delving into the elements and principles governing the dismissal for want of prosecution, the first question that needs to be considered is whether the suit is ripe for dismissal, that is, whether the period of inaction is one year as provided in law. This court is therefore called upon to peruse and critically analyse the proceedings before the court and court record in totality in order to establish whether any application has been made or any step taken by either party in the matter within 12 months (one year).
21. From a perusal of the court record, it is evident that the instant suit was filed on 02.06.2023. The plaint and summons to enter appearance were served upon the defendant on 08.01.2024. The defendant thereafter filed a statement of defence on 08.02.2024.
22. Consequently, the defendant filed an application dated 28.08.2024 seeking to restrain the plaintiff by way of permanent injunction. The said application was heard and determined vide a Ruling issued by Hon. E. Obaga J. on 03.10.2024 and whose effect was to dismiss the application with no orders as to costs.
23. Aggrieved by the said decision, the defendant filed another application dated 04.10.2024 seeking the review of the ruling issued on 03.10.2024. The application was heard and determined vide a ruling issued on 19.12.2024 by Hon. E.

Obaga J. The defendant then filed the present application dated 28.01.2025.

24. On 4<sup>th</sup> March, 2025, the matter came up in court for mention to confirm compliance with Order 11 of the Civil Procedure Rules whereupon parties were directed to file the necessary documents in compliance.
25. The suit was thereafter fixed for further mention on 02.04.2025. On the said date, the Mr. Miyianda, advocate for the defendant informed the court about the present application dated 28.01.2025 and directions were thereafter issued.
26. Thus, from a cursory look at the proceedings herein, it is clear that the suit has been active. There have been applications filed by the defendant which were heard and determined. The suit has also been set down for mention for compliance with Order 11. It is therefore not true that no step/action has been taken by either party or an application made within a period of one year as contemplated under Order 17 Rule 2(1) above.
27. The averments by the applicant that no action has been taken by the plaintiff since the filing of the suit on 02.06.2023 is misguided position and a wrong interpretation of the above section.
28. The upshot of the above is that the present application has been filed prematurely and the suit cannot therefore be dismissed for want of prosecution as sought. The applicant has failed to demonstrate the alleged inaction for a period of

one year as required by law to the satisfaction of the court, and the application must fail.

**ii) Who shall bear the Costs of the application;**

29. The general rule is that costs follow the event unless the court directs otherwise.
30. In this case, even though it is the finding of this court that the application was filed prematurely and the same is therefore not merited, it is my considered opinion that no costs should be awarded to the plaintiff/respondent since the application was not opposed. They thus did not incur any expenses in defending the application.

**Conclusion:**

31. In view of the foregoing, it is the finding of this court that the Notice of Motion Application dated 28<sup>th</sup> January, 2025 is **not merited** and is hereby **dismissed** with no orders as to costs.
32. The plaintiff is however hereby directed to expeditiously move to comply with the requirements under Order 11 of the Civil Procedure Rules and fix the matter for hearing.
33. It is so ordered.

**DATED, SIGNED and DELIVERED** virtually at **ELDORET** this **20<sup>th</sup>** day of **NOVEMBER, 2025.**

**HON. C. K. YANO**

## **ELC, JUDGE**

Ruling delivered virtually in the presence of: -

Mr. Kutto holding brief for Mutai for Plaintiff.

Mr. Miyienda for Defendant.

Court Assistant - Laban

ORIGINAL