



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.153 OF 2013

LIVINGSTONE KIPLANGAT ROTICHPLAINTIFF

VERSUS

ROSEMARY RONO.....DEFENDANT

RULING

(Notice issued by court for dismissal for want of prosecution; counsel appearing and court making order for filing of witness statements within 30 days or suit would stand dismissed; no statements filed; no step taken by plaintiff to list the case for hearing; apparent that plaintiff has lost interest in the suit; suit dismissed with costs for want of prosecution and/or want of compliance with the order to file witness statements)

1. This ruling is in respect of a notice issued to the plaintiff, to show cause why his suit should not be dismissed for want of prosecution.
2. The suit itself was filed through a plaint on 12 July 2010. In the plaint, the plaintiff pleaded that he is the registered owner of the land parcel Nakuru/Olenguruone Kiptagich/1051. He claimed that the defendant in the month of June 2010, trespassed into the land and started cultivating it. In the suit he asked that the defendant be permanently restrained. The defendant filed a defence vide which she pleaded that the same property was sold to her by the previous owner one Professor Francis D. Juma and that she is the one who has been in possession of the land since June 1999.
3. Together with the plaint, the plaintiff filed an application for injunction which was heard and determined on 24 February 2011 by Ouko J (as he then was). On 18 July 2012, the plaintiff filed a list of documents. The matter was fixed for hearing on 3 December 2013, by counsel for the defendant. On the said day, the plaintiff did not appear but Mr. Kimatta was present for the defendant. The matter could not proceed as the Judge was hearing other matters. A hearing date for 2 April 2013 was given. On that day, Mr. Kimatta was again present, but there was no appearance on the part of M/s Olaly Cheche & Company Advocates for the plaintiff. The matter did not proceed as the Judge (Waitthaka J), noted that parties had not yet fully complied with the provisions of Order 11. The matter first came before me on 1 March 2016 but there was no appearance on the part of Mr. Olaly Cheche for the plaintiff and Mr. Kimatta for the defendant. The parties were also absent. I stood the matter over generally. The matter lay silent until this court issued a notice, fixed for 24 April 2018, for the plaintiff to show cause why his suit should not be dismissed for want of prosecution. On that day, Mr. Olaly Cheche appeared for the plaintiff and stated that the suit should not be dismissed as he has been sending letters inviting Mr. Kimatta to fix a hearing date but the court file has been missing. He asked the court for a hearing date. Mr. Katithi, holding brief for Mr. Kimatta, asked that the suit be dismissed. I gave the plaintiff benefit of doubt, although from the record, I did not see any document of invitation for fixing hearing dates as claimed by Mr. Cheche. I noted that the plaintiff had not filed any witness statements or list of documents and directed that these be filed and served in 30 days. I directed that if they were not filed, it would be apparent that the plaintiff had lost interest in the case and the case would stand dismissed. I gave a mention date of 30 May 2018 to confirm the position. I did not sit on 30 May 2018 and the matter next came before me on 4 February 2019. On that day, I was informed that Mr. Cheche was indisposed and I adjourned it, but I did point out to counsel holding brief for Mr. Cheche, that there has been no compliance with my orders of 24 April 2018 as the plaintiff had filed no statements. I gave a mention date of 21 February 2019. On that day, only Ms. Langat for the defendant appeared. There was no appearance on the part of Mr. Cheche and his client was also absent. I then reserved ruling to today, on whether the case is to be dismissed for want of prosecution.

Order 17 Rule 2 of the Civil Procedure Rules provides as follows :-

2. Notice to show cause why suit should not be dismissed [Order 17, rule 2.]

- (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.*

(2) *If cause is shown to the satisfaction of the court it may make such orders as it thinks*

fit to obtain expeditious hearing of the suit.

(3) *Any party to the suit may apply for its dismissal as provided in sub-rule 1.*

(4) *The court may dismiss the suit for non-compliance with any direction given under*

this Order.

4. It will be seen from a reading of sub-rule 1 above, that where no step is taken in the matter for more than one year, the court may issue notice to the parties to show cause why the case should not be dismissed. In the instance of this case, a notice was issued, and pursuant to the submissions of counsel, the court directed that the plaintiff should file his witness statements and documents within 30 days or the matter will stand dismissed. Since that order was made, the plaintiff and his counsel have never appeared in court. I have seen from the record that the plaintiff filed a list of documents on 18 July 2012, but to date, no witness statements have ever been filed.

5. It is apparent to me that the plaintiff has lost interest in this suit. If he was still interested, he would have filed his witness statements as directed by the court. He has not filed them and he has not taken any step to have the matter heard since the order was made on 24 April 2018. There is no point in having this matter lie on the court shelves gathering dust while the plaintiff is not prosecuting it. I have no option but to dismiss the plaintiff's suit for want of prosecution and/or want of compliance with the court order to file witness statements. The plaintiff's case is so dismissed.

6. The defendant shall have the costs of the suit.

7. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 9th day of April 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Olaly Cheche present for the plaintiff.

No appearance on the part of M/s Kimatta & Co. for the defendant.

Court Assistant: Janepher Nellima/Kemboi

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU