

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO.904 OF 2012

KENYA QUARRY SELF HELP GROUP.....PLAINTIFF

VERSUS

GITUAMBA STONES LIMITED.....1ST DEFENDANT

KENYATTA UNIVERSITY CO-OP. SOCIETY.....2ND DEFENDANT

RULING

This Plaintiff filed this suit on 28/11/2012 seeking a declaration that it was the owner of L.R No.11494/6 based on the ground that its members had been carrying on the business of stone harvesting on this land since 1998. It contended that on or about 21/11/2012, the Defendants invaded the suit land and threatened to evict the Plaintiff from the suit land. The Plaintiff sought a permanent injunction to restrain the Defendants or persons claiming under them from interfering with the suit property.

Contemporaneously with the filing of the plaint, the Plaintiff filed the application dated 26/11/2012 seeking an injunction to restrain the Defendants from interfering with its possession of the suit property. The application was placed before the court on 28/11/2012 and was certified urgent. The Plaintiff was directed to serve the Defendants for *inter partes* hearing on 5/12/2012. The court record shows that the application dated 26/11/2012 was dismissed on 10/4/2013 for non-prosecution. On 14/3/2018, the matter was listed for mention when only the 1st Defendant's Advocate attended court.

The 1st Defendant filed the application dated 18/6/2018 seeking to dismiss the Plaintiff's suit for want of prosecution on the grounds that the Plaintiff had failed to have the matter set down for hearing since 10/4/2013 and that it was in the interest of justice that the 1st Defendant should be discharged from obligations imposed by the suit as the Plaintiff had lost interest in it. The application is supported by the affidavit of the 1st Defendant's counsel, W. K Kabaiku, sworn on 18/6/2018 who deponed that the 1st Defendant was not served with Summons to enter appearance in this matter, and that it is now over five years since the Plaintiff last moved the court. He urged the court to dismiss the suit since the 1st Defendant continues to suffer prejudice as long as the suit is pending.

The court has considered the application and the supporting affidavit. The Plaintiff did not file a reply to the 1st Defendant's application, despite there being evidence that its advocates were served with the application together with the hearing notice. The court is satisfied that over five years have elapsed since the Plaintiff last took steps in the suit. The Plaintiff's suit is dismissed. The 1st Defendant is awarded the costs of the application and the suit.

Dated and delivered at Nairobi this 27th day of May 2019

K.BOR

JUDGE

In the presence of: -

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff and the Defendants