



**REPUBLIC OF KENYA**

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

**ELC CIVIL CASE NO. 1219 OF 2015**

**KIBUWA LEASING AND MANAGEMENT.....PLAINTIFF/RESPONDENT**

**VERSUS**

**JADALA INVESTMENTS LIMITED.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**NGONG LANE MANAGEMENT LTD.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

1. This is the notice of motion of motion dated 16<sup>th</sup> February 2018 brought under order 17 rule 2(3) and order 51 rule 1 of the Civil Procedure Rules, Section 1A, 1B and Section 3 and 3a of the Civil Procedure Act and all enabling provisions of the law.

2. It seeks orders:-

***(1) That the this suit be dismissed for want of prosecution.***

***(2) That the costs of this application be provided for.***

3. The grounds are on the face of the applicant and are:-

***(1) That through a plaint dated 1<sup>st</sup> December 2015 the plaintiff/respondent instituted a suit against the defendant seeking judgment against the defendant for a permanent injunction and interest and costs of the suit.***

***(2) That the defendant filed the statement of defence on 26<sup>th</sup> January 2016.***

***(3) That it is now two years since the suit was filed and the plaintiff has not taken any action.***

***(4) That the plaintiff has lost interest in pursuing the suit by his conduct.***

***(5) That it is in the interest of the efficient use of the available judicial and administrative resources that the suit be dismissed.***

***(6) That it is just and fair that the defendants should be relieved of the burden of this litigation in the circumstances as every case should be concluded one way or another within a reasonable period of time.***

4. The application is supported by the affidavit of Antony Okulo, advocate sworn on the 16<sup>th</sup> February 2018.

5. The application is opposed. There is a replying affidavit sworn by John Muriuki Kibuchi, a director of the plaintiff sworn on the 28<sup>th</sup> March 2018.

6. The application was canvassed orally.

7. I have considered the notice of motion dated 16<sup>th</sup> February 2018 and the affidavit in support. I have also considered the replying affidavit and the oral submissions of counsel. The issue for determination is whether this application is merited.

8. Order 17 rule 2(1) of the Civil Procedure Rules provides that:-

***“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”***

Subsection (3) provides that:-

***“Any party to the suit may apply for its dismissal as provided in sub rule 1”.***

9. I have gone through the court record. The plaintiff/applicant filed this suit together with the notice of motion on the 27<sup>th</sup> November 2015. The last time the plaintiff moved the court was on 15<sup>th</sup> December 2015. From then no further steps were taken until the defendant filed this application. I find that this suit is ripe for dismissal for want of prosecution. I agree with counsel for the defendants that the plaintiff did not seek stay of proceedings pending arbitration.

10. I find merit in this application and I grant the orders sought namely:-

***(a) That the suit herein is dismissed for want of prosecution.***

***(b) The costs be paid to the defendants/applicants.***

It is so ordered.

**Dated, signed and delivered in Nairobi on this 15<sup>TH</sup> day of MAY 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for the Plaintiff

.....Advocate for the Defendants

.....Court Assistant