



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

CIVIL APPEAL NO. 44 OF 2016.

SAMSON MAKOKHA KACHI PAINTIFF

VERSUS

JANET BARASA SHALAKHA.....DEFENDANT

R U L I N G

The Defendant/Applicant herein has moved this Court by her Notice of Motion dated 14th February 2019 brought under Order 17 of the Civil Procedure Rules seeking the following orders:-

- 1. This suit be dismissed for want of prosecution.**
- 2. The Defendant/applicant be awarded the costs of this application and the suit.**

The application is premised on the grounds set out thereon and also supported by the Defendant/Applicant's affidavit also dated 14th February 2019.

The gravamen of the application is that having filed this suit, the plaintiff/Respondent has lost interest in the same and failed to attend Court or prosecute the suit and it should therefore be dismissed.

The application is not opposed as the plaintiff/Respondent did not file any replying affidavit or grounds of opposition and neither did he attend Court for the hearing of the application on 29th April 2019 though duly served.

Order 17 Rule 2(1) of the Civil Procedure Rules provides that:-

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."

Sub – rule 2(3) of the same order provides that

2(3) "Any party to the suit may apply for its dismissal as provided in sub-rule 1."

From the record, it is clear that this suit was filed on 3rd June 2016 and on 21st June 2016, the defendant/applicant filed her defence. The record further shows that this case was last in Court on 5th December 2016 when **MUKUNYA J** made an order withdrawing the plaintiff/Respondent's Notice of Motion dated 28th July 2016. Since then, the plaintiff/Respondent has not taken any action to have this suit prosecuted. That is a period of over two (2) years. As the application was not opposed, this Court has no reason to determine whether or not there are good grounds to justify this suit remaining in our records. I am persuaded to agree with the Defendant/Applicant that the plaintiff/Respondent has lost interest in this case which must therefore be dismissed.

The up-shot of the above is that this Court makes the following orders with respect to the Notice of Motion dated 14th February 2019:-

- 1. That suit is dismissed for want of prosecution.**
- 2. The Defendant/Applicant shall have the costs of both the suit and the application.**

Boaz N. Olao.

J U D G E

9th May 2019.

Ruling dated, delivered and signed in Open Court this 9th day of May 2019.

Plaintiff absent

Defendant present

Boaz N. Olao.

J U D G E

9th May 2019.