



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
CIVIL SUIT 521 OF 2013

KATIKU KASINA.....PLAINTIFF

TITUS MUSEI.....PLAINTIFF

NICHOLAS WAMBUA.....PLAINTIFF

JOHN KILONZO.....PLAINTIFF

ARON MUTUKU (As executive officials of

Maili Saba Mwengenyu Youth Self Help Group.....PLAINTIFF

VERSUS

PETER NGULU MUTURI.....DEFENDANT

RULING

This matter was commenced by way of the plaint dated 2/5/2013. The Plaintiff contended that on 3/12/2010, it was declared the owner of land reference number 11531/9 (“the Suit Property”) by adverse possession through a decree issued in **HCCC NO.353 of 2009 (O.S)**. At the time the decree was issued, the Defendant was the Chairman of the executive committee of the Plaintiff.

The Plaintiff averred that after the decree was issued, using fake documents and title to the Suit Property, the Defendant purported to sell the Suit Property to unsuspecting members of the public following which he was arrested and later released on bail but he continued to sell the pieces of land. The Plaintiff sought an order of permanent injunction against the Defendant, his servants or agents seeking to restrain him from selling, subdividing, transferring or dealing in any way on any part of the Suit Property, together with the costs of the suit.

Contemporaneously with the filing of the plaint, the Plaintiff filed the application for injunction dated 02/05/2013. That application was opposed by the Defendant through his replying affidavit sworn on 11/6/2019. The record indicates that the matter was to be mentioned on 2/12/2013 for a ruling date to be issued. On 2/12/2013, both parties did not appear and the matter was stood over generally.

On 4/4/2019, the Defendant filed the application dated 3/4/2019 seeking the dismissal of the suit for want of prosecution based on the grounds that the suit has been overtaken by events since the Defendant is no longer an official or chairman of Maili Saba Mwengenyu Self Help Group and the current officials of the group have a pending suit, **Nairobi ELC No. 994 of 2014** filed by Unity 45 Housing Co-operative.

The application was supported by the affidavit of Tom Oduo K'opere, counsel for the Defendant, sworn on 3/4/2019. Mr. K'opere deponed that he came on record for the Defendant on 17/05/2019, and that it is now over three years since the Plaintiffs' advocates last took action in the matter. He further deponed that upon receipt of the mention notice from court dated 16/03/2018, he wrote to the Plaintiff's advocates on 14/06/2018 advising them that the suit had been overtaken by events while proposing that they withdraw the matter when it came up for mention on 04/09/2018. He attached a copy of that letter and the mention notice issued by the Deputy Registrar of this court dated 16/03/2018. He deponed that the Plaintiffs did not appear in court on 04/09/2018, and even after being served with the mention notice for 27/03/2019, they did not appear. He urged the court to allow the application. The application dated 03/04/2019 was not opposed by the Plaintiffs.

The court has considered the application, supporting affidavit and the law applicable. The court is convinced through the affidavits of service filed that the Plaintiffs were served with the application together with the mention notices in respect of this matter but they did not attend court. The record shows that counsel for the Plaintiffs last appeared in the matter on 11/11/13. No further steps have been taken in the suit after that. The Plaintiffs have lost interest in the matter. This suit is dismissed with costs to the Defendant.

Dated and delivered at Nairobi this 28th day of June 2019

K.BOR

JUDGE

In the presence of: -

Mr. T. Kopere for the Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiffs