

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCLC NO 112 OF 2023

PETER NJOROGE

MANG'ARA.....PLAINTIFF

VERSUS

LEONARD GITHUI

MURIITHI.....DEFENDANT

RULING

By an Application dated 20/8/2025, the Defendant who is acting in person urges this Court to dismiss this suit for want of prosecution with costs on the ground that the case was filed in Nyahururu on 28/3/2023 before it was transferred to Nyandarua on 31/10/2023, slightly over 7 months later. The Defendant is of the view that the delay in prosecuting the suit is proof that he has lost interest in it. He further says that the case is adding to the backlog of cases in Court for no good reason.

The Defendant brings to the attention of the Court that the Plaintiff has failed to aid the Court to meet its overriding objective and that it is in the interest of justice that his Application be allowed. In his oral submissions, the Defendant told the Court that he suffers whenever he thinks about the case, both psychologically and emotionally.

In his reply, Mr Wambugu, Advocate says that before the current Application was filed, a mention date had already been given i.e. 9/10/2025 and that therefore the matter had already commenced prosecution and the Defendant informed of this via an SMS text message which was received by the Defendant on 6/8/2025 at 11:12am. This therefore indicates that the Plaintiff is desirous that the case be prosecuted.

Order 17 Rule 2 sub-rule (1), (3) and (5) of the civil Procedure Rules explains the circumstance under which a suit may be dismissed for want of prosecution.

Sub-rule (1) 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.

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

(5) A suit stands dismissed after 2 years where no step has been undertaken.

It is true that this suit was filed on 28/3/2023 and the Defendant entered appearance on 11/4/2023 and filed Defence 17 days later. On 6/8/2025 Mr. Wambugu of Wambugu Wanjohi & Co advocates appeared at the registry in the absence of the Defendant and fixed the matter for mention on 9/10/2025. In

between and specifically on 25/8/2025, the Defendant filed the current Application.

I do appreciate the Defendant's concern that the case, like many others, is adding up to the backlog of cases in Court for no good reason. But unfortunately, a step had been taken before the Defendant filed the Application.

The Plaintiff had moved the Court by taking a mention date so that, I believe, the Court could give directions on how to proceed with the matter. The Defendant was therefore late since the law talks of a situation where

“ no Application has been made or step by either party for one year”.

This is a case of adverse possession. It is true that since a Defence was filed on 28/4/2023 to 6/8/2025, a period of more than 2 years 4 months had lapsed but a step had been taken by the Plaintiff 19 days before the Defendant filed this Application. Had the Defence moved the Court 19 days before then, this Court **may** have exercised its discretion in his favour.

Both parties have wholly filed their Witness Statements and list/bundle of documents meaning that the case has matured for hearing and I order that a hearing date be taken forthwith in Court. Should any party herein be desirous of filing further Witness Statements and/or Documents, he shall have 14 days from today to do so. The costs of this Application shall await the outcome of the suit.

**RULING DATED AND DELIVERED AT NYANDARUA THIS
12TH DAY OF FEBRUARY, 2026.**

**HON MUGO KAMAU
JUDGE**

In the presence of:

Court Assistant - Samson.

For the Plaintiff.....Mr. Wambugu

For the Defendant.....Defendant in person in open
Court.