



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 209 OF 2018

JOSEPH KIPLETICH SINGOE.....PLAINTIFF

VERSUS

RICHARD K. KOECH.....1ST DEFENDANT

KIPKOECH LANGAT.....2ND DEFENDANT

RULING

1. By Notice of Motion dated 8th February 2019, the defendants sought dismissal of this suit with costs for want of prosecution. The application is supported by an affidavit sworn by the 1st defendant. He deposed that the matter was last in court on 26th September 2017 when it was given a date of 1st December 2017. Since 1st December 2017 the plaintiff has taken no step to have the matter set down for hearing.

2. The plaintiff responded through a replying affidavit in which he deposed that he could not fix a hearing date since every time his advocates sought the file at the registry for that purpose, the file could not be located. That during the years 2017 to February 2019, he was unable to get any dates at the registry and that after February 2019, he couldn't fix a date owing to the pendency of the present application. He also stated that he invited the defendants to attend the registry for fixing pursuant to his advocates' letter dated 7th December 2017.

3. At the hearing of the application, counsel for the applicants submitted that the matter has been pending since the year 2007 when it was filed as a High Court case before being transferred to this court and that the plaintiffs have not taken any step for over a year since 1st December 2017, thus making the matter ripe for dismissal. On his part, counsel for the respondent submitted his client is ready to have the matter heard if the court could allocate a hearing date. He added that dates have not been readily available at the registry. He beseeched the court to give the plaintiff a chance to be heard.

4. I have considered the application, the affidavits filed as well as the submissions by counsel. The application is brought under Order 17 Rule 2 of the Civil Procedure Rules. The rule provides:

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.

(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.

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

5. There is no dispute that this matter was last scheduled to be on the cause list on 1st December 2017 and that it did not proceed on that date for no fault of any of the parties. Similarly, it is not disputed that since then, the matter has not had any date in court besides the hearing of the present application. Theoretically therefore, a period of over one year has passed since the matter was last listed.

6. A perusal of the record reveals that the date of 1st December 2017 was meant to be for a mention to among others take a hearing date. The record further reveals that before then, the matter came up inter alia on 27th March 2017 when the plaintiff was granted leave to amend the plaint, on 14th June 2017 when pre-trial directions were given and on 26th September 2017 when directions regarding service of summons to enter appearance upon the newly joined 3rd defendant were given. It is thus apparent that the matter has been fairly active. Taking all these factors into account and further considering that the matter was partly heard in the High Court before the said court ordered hearing to commence de novo and transferred the matter to this court, I am minded to give the plaintiff an opportunity to prosecute his case.

7. In view of the foregoing, Notice of Motion dated 8th February 2019 is dismissed. Costs in the cause.

Dated, signed and delivered in open court at Nakuru this 19th day of June 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Kahiga for the defendants/applicants

No appearance for the plaintiff/respondent

Court Assistants: Beatrice & Lotkomoi