



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 1059 OF 2013

STEPHEN WANYEE ROKI.....PLAINTIFF/RESPONDENT

=VERSUS=

ATHI WATER SERVICES BOARD.....DEFENANT/APPLICANT

RULING

1. This is the notice of motion dated 26th March 2015 brought under order 17 rules 2 (1) and (3) and order 51 rule (1) of the Civil procedure rules, 2010. Section 1A and 1B of the Civil Procedure Act, Cap 21 Laws of Kenya.

2. It seeks:-

1. That the honourble court be pleased to dismiss this suit for want of prosecution.

2. That the costs of this application, as well as of the suit be paid by the plaintiff.

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

a. That the plaintiff has failed to take any step to prosecute his suit herein for a period of over one (1) year since the honourable court (Hon. Mwangi J) delivered its ruling on plaintiff's application by way of Notice of Motion dated 3rd September, 2013 on the said 3rd September 2013.

b. That in the circumstances, the plaintiff has clearly lost interest in his suit and it is highly unfair on the defendant to allow this suit to continue to tax the defendant.

c. That the one year statutory period prescribed under the above cited rules of procedure having been achieved, this honourable court is seized with the right to grant the defendant's application herein, in the interest of justice, expeditious and fair disposal of suits.

4. The application is supported by the affidavit of Daniel Sifuma, advocate for the defendant sworn on the 26th March 2015.

5. The application is opposed. There is a replying affidavit sworn by Stephen Wanyee Roki, the plaintiff/respondent herein on the 11th June 2015.

6. On the 23rd June 2015, the court directed that the application be canvassed by way of written submissions. It appears the plaintiff did not file as his submissions are not on record.

7. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit, the written submissions and the authorities cited. The issue for determination is whether there has been inordinate delay on the part of the plaintiff in prosecuting this case and whether the delay is prejudicial to the defendant.

8. I have gone through the court record. The last time the matter was in court was on 3rd September 2013. Between then and the date of this application it was eighteen (18) months. Even to date the plaintiff has not moved the court in any way.

9. In paragraph 3 of his replying affidavit, the plaintiff states:-

“That in response to paragraph (7) I wish to state that the National Land Commission has continuously delayed in issuing me with the land title No. 258. Annexed herein and marked SWR 2 is a letter from the National Land Commission dated 5th November 2014 and another letter from the National Land Commission dated 12th November 2014 where they have urged me to remain patient as they try to solve the issues regarding the parcel of Land”

In paragraph 4 he states:-

“ That in further response to paragraph (7) of the supporting affidavit, I wish to state that I am well aware that the case cannot be dealt with until I am acknowledged as the registered owner of the land parcel thus I am trying as hard as possible to acquire the title and shall fix the case for hearing one I get the title in my name.

In these two paragraphs the plaintiff appears to admit that he instituted this suit prematurely. It is clear that he has no documents to support his claim to the land.

10. I find that the reasons given in the replying affidavit do not constitute a reasonable explanation for the delay in prosecuting this suit. In the case of **Agip (Kenya) Ltd vs Highlands Tyres Limited [2001] KLR 630**, a delay of eight (8) months was considered not to be inordinate. Order 17 rule 2 (1) of the Civil Procedure Rules 2010 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 not dismissed, and if cause is not shown to its satisfaction, may dismiss the suit”.

11. In the instant case the plaintiff did not take any action for eighteen (18) months before the defendant filed this application. I find that he has not given a reasonable explanation for the delay.

12. In conclusion, I find merit on this application and the same is allowed accordingly. The plaintiff’s suit is dismissed for want of prosecution with costs to the defendant.

It is so ordered.

Dated, signed and delivered in Nairobi on this 18TH day of July 2019.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Defendant

Kajuju - Court Assistant