



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 242 OF 2013

VIHIGA FARMERS COMPANY LIMITED.....APPLICANT

VERSUS

AFRICAN ISRAEL CHURCH.....1ST RESPONDENT

LUGARI YEARLY MEETING OF RELIGIOUS SOCIETY OF

FRIENDS CHURCH.....2ND RESPONDENT

RULING

1. **African Israel Church** and **Lugari Yearly Meeting of Religious Society of Friends Church**, the 1st and 2nd respondents, filed the Motions dated the 14th June, 2016 and 9th June, 2016 respectively seeking for the following orders:

- (a) That the suit be dismissed for want of prosecution.
- (b) Costs.

The applications are based on the four grounds on each of the Motions summarized as follows:

- i. That the Applicant filed this suit in 2013.
- ii. That the Applicant has not taken any steps to prosecute the suit since the last court action of 20th March, 2014.
- iii. That there has been inordinate delay in prosecuting this suit and it should be dismissed for the sake of justice.

The applications are supported by the affidavits sworn by Michael Wabomba Masinde and Esther C. W. Torosi Advocates for the 1st and 2nd Respondents respectively, more or less restating the grounds on the Motions.

2. The applications are opposed by the Applicant through the replying affidavit of Zacharia Monyo, Director of Vihiga Farmers Company Limited the applicant, on the 18th September, 2019 summarized as follows:

- (i) That they instructed M/s J. M. Wafula & Company Advocates to file the matter in 2013 and later lost contact with the Advocate. That later, they learnt the Advocate had passed on and it took time to trace their file and establish the status of their suit.
- (ii) That some of the directors of the Applicant also passed on and the deponent was sickly.
- (iii) That in 2016, they instructed M/s E. C. Rotich Advocate to proceed with the matter but they later learnt that the Advocate had also passed on without filing any documents.
- iv. That out of the nine (9) directors of the Applicant, six (6) have passed on leaving three (3) who are elderly and sickly and it has been difficult to hold company meetings to transact company business including replacing the deceased directors.
- v. That the deponent got to know of the applications after being served with a mention notice dated 11th March, 2019 and he

instructed the current counsel.

vi. That the delay was not intentional as it was occasioned by matters beyond their control.

3. The applications came up for hearing on the 19th September, 2019 when counsel for the 1st respondent and Applicant agreed to have the court write its ruling based on the basis of the documents filed.

4. The following are the issues for the court's determinations:

(a) Whether the Applicant has shown sufficient cause why the suit should not be dismissed for failure to take steps to prosecute it for more than one year.

(b) Who pays the costs?

5. The court has considered the grounds on the application, affidavit evidence by the three parties, the record and come to the following determinations;

(a) That this suit was commenced by African Israel Church through the originating summons dated the 4th June, 2013 and filed on the 8th April, 2013. The respondents were duly served and instructed counsel who have been representing them. That directions were taken on the 19th November, 2013. That since then there were mentions on 20th March, 2014 and 15th December 2014 only, before the current applications were filed on the 14th and 9th June, 2016. That from the last court action of 15th December, 2014 when a date for mention on 28th May, 2015 was taken, to the dates the applications were filed, a period of about one and a half years had lapsed. That the Respondents were therefore justified to file the applications.

(b) That though a period of over one year had passed from December, 2014 to the time the applications were filed without any steps being taken to prosecute the case, the Applicant's explanation that their original and second counsel had passed on thereby causing the delay has not been rebutted by the respondents. That even though the Applicants had duty to make follow up with their counsel and appeared to have been slow in that, their explanation is reasonable.

(c) That in view of the finding above, and so as to give the Applicant one last chance to put their house in order and prosecute their case, the court finds their explanation of the delay reasonable. That however, the Applicant will pay the respondents costs of the application as it is their delay in prosecuting the suit that occasioned the filing of the Motions.

6. That flowing from the foregoing, the court finds no merit in the applications dated and filed on the 9th and 14th June, 2016 and are dismissed but the costs be paid by the Applicant.

Orders accordingly.

Dated and delivered at Eldoret this 17th day of October, 2019.

S. M. KIBUNJA

JUDGE

Ruling read in open court in the presence of:

No appearance for Applicant.

No appearance for 1st Respondent.

No appearance for 2nd Respondent.

Christine: Court Assistant