



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MOMBASA**

**ELC NO. 299 OF 2016**

**THATHINI DEVELOPMENT CO. LTD.....PLAINTIFF**

**VERSUS**

**HANIF IQBAZ KHAN .....1<sup>ST</sup> DEFENDANT**

**MOMBASA COUNTY GOVERNMENT.....2<sup>ND</sup> DEFENDANT**

**DIRECTOR GENERAL/NEMA.....3<sup>RD</sup> DEFENDANT**

**RULING**

***(Notice to show cause why suit should not be dismissed for want of prosecution; explanation being that the plaintiff had internal wrangles; no affidavit filed to support these claims but benefit of doubt given; plaintiff directed to take steps to move the case)***

1. This suit was filed on 14 October 2016 through which the plaintiff averred to be the owner of the land parcel 546 Sec II/MN. She pleaded that the 1<sup>st</sup> defendant has illegally invaded the land and is harvesting murram. The plaintiff pleaded that the 2<sup>nd</sup> defendant illegally issued to the 1<sup>st</sup> defendant a permit for extraction of murram and that the 3<sup>rd</sup> defendant has issued a fraudulent mining licence. In the suit the plaintiff sought orders to permanently stop any further mining, general and punitive damages and costs. Together with the plaint, the plaintiff filed an application for injunction which was heard and ruling delivered on 1 November 2016. Since then the plaintiff has not taken any step to move the matter.

2. Given that position, this court served the plaintiff with a notice to show cause why the suit should not be dismissed for want of prosecution pursuant to the provisions of Order 17 Rule 2 (1) which provides that where no step is taken within one year, the court may give notice for the plaintiff to show cause why the case should not be dismissed for want of prosecution.

3. At the hearing of the notice, Mr. Mwaniki, learned counsel for the plaintiff, submitted from the bar that the plaintiff is a limited liability company which was embroiled in wrangles which resulted in a suit Mombasa HCCC No. 362 of 2014. He stated that all issues have now been resolved and the Board is properly constituted. He has stated that the plaintiff is desirous of prosecuting the case.

4. Mr. Gathu, learned counsel holding brief for Mr. Kibara for the 2<sup>nd</sup> defendant, pointed out that no affidavit has been sworn.

5. There is no question that this matter has not been moving. No replying affidavit has been filed to support the claims of counsel on record for the plaintiff. Ideally, one should have been filed. Nonetheless, I will give benefit of doubt to the plaintiff. I will not dismiss the suit but the plaintiff will pay to the 2<sup>nd</sup> defendant attendance costs of the hearing of this notice and must move her case or else this court will reserve its discretion to revisit the notice to show cause.

6. I will give further directions after the delivery of this ruling.

7. Orders accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA this 12<sup>th</sup> day of November 2019.**

**MUNYAO SILA**

**JUDGE**

IN THE PRESENCE OF:

Mr. Chebukaka holding brief for Mr Mwaniki for the plaintiff.

Ms. Nyaga holding brief for Mr Kibara for 2<sup>nd</sup> defendant.

Court assistant; David Koitamet.