



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 62 OF 2013

HAIDERALI POPAT TEJA.....PLAINTIFF

VERSUS

FESTUS CHARO GONA & OTHERS.....DEFENDANTS

RULING

(Application for dismissal of suit for want of prosecution; one year not having lapsed from the date of the last action; Order 17 Rule 2 requiring that one year must lapse; application dismissed)

1. The application before me is that dated 15 May 2019 which seeks to have the plaintiff's suit dismissed for want of prosecution. The suit before me is consolidated with the suit Mombasa HCCC No. 109 of 2013 (OS). In this suit, the plaintiff sued the defendants for vacant possession of the land Plot Number MN/II/380 whereas in the suit Mombasa HCCC No. 109 of 2013, several persons have claimed the same land by way of adverse possession. The supporting affidavit to this application has been sworn by one Festus Charo Gona, one of the applicants in the suit for adverse possession. As mentioned, the application seeks the dismissal of this suit for want of prosecution.

2. Order 17 Rule 2 applies and the same is drawn as follows :-

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.

(4) The court may dismiss the suit for non-compliance with any direction given under this Order.

3. It will be noted that for this court to dismiss a suit for want of prosecution, it must be satisfied that at least one year had lapsed from the time the last step in the suit was made, to the time of filing the application.

4. I have perused the record and from the same, I note that the last time the matter was in court was on 3 December 2018 when the court gave directions for parties to comply with Order 11. This application was filed on 11 June 2019, before the lapse of one year and thus cannot be entertained.

5. I do not see the need of saying more.

6. This application is has no merit and is hereby dismissed with costs.

7. Orders accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 6th day of November 2019.

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MUNYAO SILA,

JUDGE.

IN THE PRESENCE OF:

Mr. Amadi for the respondent.

No appearance on the part of M/s A. I Hayanga & Associates for the applicants.

Court assistant ; David Koitamet.