



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC. NO. 105 OF 2017

HUSNI SAID MBARAK (Suing as a special owner on behalf of

PATWANT SINGH).....PLAINTIFF

VERSUS

HASHAM AKI ADAM & 4 OTHERS.....DEFENDANTS

RULING

(Application for dismissal of suit for want of prosecution; no action taken for more than one year; no reply to the application for dismissal; clear that the plaintiff has lost interest in the matter; suit dismissed for want of prosecution)

1. The application before me is that dated 23 April 2019 filed by the 5th defendant. The application seeks orders that this suit be dismissed for want of prosecution. There is also a similar application on record filed by the 2nd defendant. No response has been filed to both applications.

2. I have perused the record and noted that this suit was commenced through a plaint which was filed on 30 March 2017. The plaintiff has pleaded that he is “the special owner as caretaker and occupier” of the Plot MSA/MS/Block I/420 situated in Likoni and registered in the name of Patwant Singh. He has pleaded that on 20 March 2017, the defendants unlawfully invaded the suit land, took possession and started constructing thereon. In the suit, he asked for orders of injunction against the defendants.

3. The 2nd and 5th defendants filed defence and put the plaintiff to strict proof.

4. The matter came up before court on 9 November 2017 for an application for injunction which was filed together with the suit, and on that day counsel for the plaintiff sought to have the matter stood over generally to allow him amend the plaint. The case was then stood over generally. From that day, no step has been taken by the plaintiff to move the matter.

5. Order 17 Rule 2 applies in applications of this nature and it provides 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.

6. It is clear that more than one year has lapsed from the time the suit was stood over generally to the time the two applications were filed. The plaintiff has not responded to the applications which demonstrates that he no longer has any interest in the suit.

7. Given the above, I do proceed to dismiss this suit for want of prosecution. The 2nd and 5th defendants will have the costs of the two applications and of this suit.

8. Orders accordingly.

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

MUNYAO SILA,

JUDGE.

IN THE PRESENCE OF:

Mrs. Kyalo for the 2nd defendant/applicant.

Mr Amadi holding brief for Ms. Mboko for the 5th defendant.

No appearance on the part of M/s Odour Siminyu & Company Advocates for the plaintiff.

Court Assistant; Koitamet.