

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 245 OF 2016

DAVID KIPROTICH TOO :::::::::::::::PLAINTIFF/RESPONDENT

VERSUS

STEPHEN MBURU NJOROGE ::::::::::::::DEFENDANT/APPLICANT

RULING

The application is dated 31st October 2017 and is brought under section 1A, 1B and 3A of the Civil Procedure Act, order 40 rule 7 of the Civil Procedure Rules 2010 seeking the following orders;

1. THAT this honourable court be pleased to discharge and/or set aside the temporary order of injunction issued on 30th November, 2016 by Mukunya J.
2. Costs of the application be in the cause.

The applicant submitted that, he was sued by the plaintiff/respondent in his capacity as employee of one Beverly Wamburi Kingori who is the Administrator of the estate of the late Wilson King'ori Wamburi, the registered owner of land parcel KAKAMEGA/SERGOIT/44. That as an employee and caretaker of the land, he was responsible for maintaining the land on behalf of the Administrator of the estate of the late Wilson King'ori Wamburi. Onn the 29th November, 2016, the plaintiff/respondent obtained a temporary order of injunction against him as per the attached copy (Annexed hereto is a copy marked "SMN 1"). That from the time the plaintiff/respondent obtained the temporary orders, he has never taken any step to prosecute his notice of Motion dated 29th November, 2016 or in any other manner move the court regarding this case. That the said orders have prevented him from discharging his duties on the land as an employee thereby occasioning loss to the administrator of the estate. The plaintiff/respondent was required to prosecute his Notice of Motion within 14 days from the date of the order, in order for the court to either extend or to discharge the temporary orders of 30th November, 2016. That the temporary orders have lapsed with time hence the plaintiff/applicant is benefitting from them irregularly. That the orders should be discharged by this court on the basis that the plaintiff/respondent has been indolent in prosecuting his application.

This court has considered the applicant's submissions. The respondent was served but failed to attend court or file any papers in opposition. It is the applicant's case that, the plaintiff/respondent has never listed the application for inter parties hearing or in any other manner moved the court regarding the Notice of Motion dated 29th November, 2016 which gave rise to the temporary orders. That it is now over ten months of inaction by the plaintiff/respondent as regards the Notice of Motion dated 29th November, 2016. That the temporary orders have never been extended by this honourable court hence should be discharged on the basis of passage of time and laches on the part of the plaintiff/respondent. On perusal of the court file I find this to be the position, it is true that the plaintiff/respondent has never listed the application for inter parties hearing or in any other manner moved the court regarding the Notice of Motion dated 29th November, 2016 which gave rise to the temporary orders. this application is not opposed and I grant it as prayed.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 24TH DAY OF

JANUARY 2018.

N.A. MATHEKA

JUDGE