



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 95 OF 2012

PATRICK WATILA BUYELA.....PLAINTIFF

VERSUS

BEATRICE NAKHUMICHA KHAOYA.....DEFENDANT

R U L I N G

1. The suit before me was filed on 12/6/2012. On 24/1/2018 the defendant lodged an application seeking its dismissal. The grounds on which that application is made are that it is over 1 year since the suit was last in court on 4/10/2016 yet the plaintiff had taken no step to further its progress, and that the plaintiff had lost interest in prosecuting the suit. This, the defendant avers, contributes to an unnecessary backlog of court cases and undermines the efficient dispensation of justice. Litigation, the defendant avers, must come to an end. The application is supported by the affidavit of Prof. Nixon Sifuna, Advocate sworn on 15/1/2018.

2. The plaintiff replied to that application vide his sworn affidavit dated 9/2/2018 in which he states as follows; to paraphrase; that he has not been ordered by the court to undertake any action in the matter which he can be deemed to have refused to undertake; that on 4/6/2016 the case was adjourned at the defendant's instance; that by then the court could not give this matter a date as the diary was full; that later when he visited his counsel around June, 2017 the diary for 2017 was full and he was advised to wait for the diary for the year 2018; that the defendant herein also has a duty to fix the matter for hearing.

3. I have considered the last point, that the defendant too has a duty to fix this matter for hearing with much concern because in my view a party cannot file a suit and expect others, especially the sued person to drive it forward for him. It is much the worse in this case for the reason that there is no counterclaim by the defendant which could needle her into actively pressing for the hearing in order to attain certain orders therein. Though I agree that the defendant in any case may set the suit down for hearing, that is an extremely lame defence to an application for dismissal of any suit for want of prosecution.

4. I have however considered the plea that on 4/10/2016 it was the defendant who occasioned the adjournment of the suit that is borne out by the record. On 4/10/2016, the court while adjourning the matter never gave it a hearing date, and the plaintiff went to sleep or so it appears until he was jolted out of his sweet somnolence by the instant application. However the plaintiff's further plea is that unbeknownst to the defendant he had visited his advocates on the record in June, 2017, less than one year after the last adjournment in the case, where he was informed that the 2017 Court Diary was full and he should await the 2018 Court Diary to be opened. He also states that he is interested in prosecuting the suit and the application herein should be dismissed and the suit fixed for hearing. I consider that to be a plausible defence to the application, which has not been challenged by the applicant and on that basis I think the application should fail.

5. I therefore dismiss the application dated 15/1/2018 and order that the main suit herein shall be heard to completion on **24/9/2018**. Both parties should therefore attend court prepared to proceed with their respective cases. Costs of the application shall be in the cause.

Dated, signed and delivered at Kitale on this 20th day of April, 2018.

MWANGI NJOROGE

JUDGE

20/4/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Munialo for Plaintiff

N/A for the Defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

20/4/2018