

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 21 OF 2014

JOSEPH MOTURI ISOE.....1ST PLAINTIFF

ISAAC OYARO.....2ND PLAINTIFF

VERSUS

SAMUEL KANYI MAINGI.....DEFENDANT

RULING

Joseph Moturi Isoe and Isaac Oyaro sue Samuel Kanyi Maingi by originating summons dated 13/1/2014 and filed on 28/1/2014. The Defendant filed the replying affidavit on 18/2/2014. The amended originating summons was filed on 3/12/2014. Directions have not been taken in accordance with the provision of Order 37 Rule 16 of the Civil Procedure Rules 2010.

The defendant has made an application dated 8/2/2018 by way of Notice of Motion seeking an order that the suit herein be dismissed for want of prosecution and that costs be bared by the plaintiff. The application is bond on grounds that the plaintiffs/respondents have taken no steps to prosecute the suit having filed it on 28th January, 2014. That it is now over three years since the plaintiffs/respondents filed the suit and that no action has been taken by the plaintiffs/respondents toward prosecution of their suit for over two years. That there has been undue delay in finalizing this matter which has greatly prejudiced the defendant/applicant. The plaintiffs/respondents have clearly lost interest in the suit and it therefore ought to be dismissed with costs for want of prosecution.

In the supporting affidavit, the defendant states that since 30/1/2015 no action has been taken by the plaintiffs towards prosecuting of their case. That the has been undue and inordinate delay in prosecuting the originating summons. In reply, the counsel for the defendant states that he has been in the registry on various occasions and dates have not been available. Moreover, that the parties have been engaging in out of court settlement.

Having perused the record I considered the application and the reply and rival submissions, I do find that the Registrar has not placed the originating summons before the Judge, for directions and therefore the matter in not ripe for dismissal for want of prosecution.

Dated and delivered at Eldoret this 12th day of April, 2018.

A. OMBWAYO

JUDGE