



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC. CASE NO. 441 OF 2015**

**IN THE MATTER OF REGISTERED LAND ACT, CAP 300 LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTION 38 OF THE LIMITATIONS OF ACTIONS ACT**

**AND**

**IN THE MATTER OF ACQUISITION OF LAND BY ADVERSE POSSESSION BY PHILEMON JOS ORIGA AND FIDELIS IMOSA OGWANT**

**AND IN THE MATTER OF THE LAND PARCEL NO. ISUMU/MANYATAA "A"/53**

**PHILEMON JOS ORIGA.....PLAINTIFF**

**VERSUS**

**BOAZ ALEGO ORENDO.....DEFENDANT**

**RULING**

1. Philemon Jos Origa and Hellen Origa the Applicants, seeks through the notice of motion dated 18<sup>th</sup> July, 2017, for a review of the Court Order of 22<sup>nd</sup> March 2017 dismissing the suit for want of prosecution and reinstating the suit for hearing. The application is based on the three (3) grounds on its face and supported by the affidavit sworn by Philemon Jos Origa on the 18<sup>th</sup> July 2017.
2. The application came up for hearing on the 13<sup>th</sup> March 2018 and today's date for ruling was fixed.
3. The issues for determination are first whether the Applicants have established reasonable cause why they have not taken any steps to prosecute their case for over one year and secondly who pays the costs of the application.
4. The Court has carefully considered the grounds on the application, the affidavit evidence in support, the Applicants' Counsel short submissions during the hearing and come to the following conclusions;
  - a) That by the time the Notice to Show Cause under Order 17 Rule 2 of the Civil Procedure Rules was issued on the 2<sup>nd</sup> December 2016 for hearing on the 22<sup>nd</sup> March 2017, the last Court appearance was on the 12<sup>th</sup> June 2012. That both the Applicants and Respondent were represented by Counsel on that date and the Court directed among others that date be fixed at the registry.
  - b) That on the 12<sup>th</sup> August 2014, a representative of the Counsel for the Applicants fixed the suit for hearing on the 18<sup>th</sup> November, 2014 and the record indicates that hearing notices were to issue and obviously be served. The record does not have any indication as to whether the hearing notice was ever served on the Counsel for the Respondent and what transpired on the said hearing date.
  - c) That it is therefore clear that the last step taken by the Applicants towards prosecuting this case was on the 12<sup>th</sup> August 2014 when the hearing date was fixed. That from the 12<sup>th</sup> August 2014 to the date the notice to show cause was issued, a period of over three years, three months had lapsed without any steps to prosecute this case being taken by the Applicants.
  - d) That on the day of the hearing of the Notice to show cause, that is the 22<sup>nd</sup> March 2017, Counsel for the parties were present as well as one of the Applicants. The Counsel addressed the Court at length on whether or not the suit should be dismissed for want of prosecution. The Court then made its ruling in which it inter alia found that "...the Plaintiff/Applicant has failed to show good and

reasonable cause why the suit should not be dismissed for want of prosecution.” The Court then proceeded to dismiss the suit for want of prosecution. That having considered the grounds on the notice of motion and affidavit evidence tendered and having again perused the Court record, there is nothing new that has been presented to the Court to explain why for more than three years, no step was taken to prosecute this case. The existence of other cases in the lower court on its own, without obtaining orders to stay the proceedings in this case, is not enough to excuse the Applicants from the obligation placed on them by the law to ensure their suit is prosecuted without undue delay.

5. That in view of the foregoing, the Applicants’ notice of motion dated 18<sup>th</sup> July 2017 is without merit and is hereby dismissed with no orders to costs. The file be closed.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**

**DATED AND DELIVERED THIS 9<sup>TH</sup> DAY OF MAY 2018**

**In the presence of:**

Applicants: Absent

Respondents: Absent

Counsel: Mr. Odeny for Mwau for Plaintiffs/Applicants

Mr. E. K. Gitonga for Kopet for Defendant

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**