

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 38 OF 2006

CITY COUNCIL OF NAIROBI.....PLAINTIFF

VERSUS

SIMON KIMONDO MUBEA.....DEFENDANT

RULING

What is before me is the Plaintiff's application dated 9th May, 2017 seeking the setting aside of the orders that were made herein by Angawa J. on 29th May, 2007 staying this suit pending the hearing and determination of Nairobi HCCC No. 2012 of 1999. I have considered the Plaintiff's application together with the affidavit filed in support thereof. I have also considered the grounds of opposition and the replying affidavit that were filed by the Defendant in opposition to the application. Finally, I have considered the submissions that were made before me on 5th October, 2017 by the advocates for both parties.

I am not satisfied that the Plaintiff has put forward sufficient reasons to warrant the grant of the order sought. It is not disputed that this suit was stayed by Angawa J. on 29th May, 2007 pending the hearing and determination of Nairobi HCCC No. 2012 of 1999. Angawa J. made the said order after hearing all the parties. It is not disputed that Nairobi HCCC No. 2012 of 1999 has not been determined. The reason that has been put forward for the application before me is that this suit has come up for dismissal for want of prosecution on several occasions and that it stands the risk of being dismissed while the Plaintiff is unable to proceed with the same due to the stay order in question. The Plaintiff has contended that it is not a party to Nairobi HCCC No. 2012 of 1999 and as such cannot push for the hearing and determination of that case so as to pave way for the hearing of this case. The Plaintiff has contended that it has somehow found itself between a rock and a hard place.

I find no merit in the foregoing arguments that have been put forward by the Plaintiff. This suit cannot be dismissed for want of prosecution while the stay order complained of is in place. This suit was dismissed on 29th May, 2015 for want of prosecution when the Plaintiff failed to attend court and show cause why the suit could not be dismissed. If the Plaintiff had attended court and informed the court that the suit had been stayed, the same could not have been dismissed. In any event, when the Plaintiff filed an application for the reinstatement of the suit and pointed out to the court that the suit had been stayed and as such was dismissed by mistake, the suit was reinstated. There is therefore no likelihood of this suit being dismissed once again for want of prosecution while the stay order aforesaid is in force. The Plaintiff had also raised the issue of its inability to have Nairobi HCCC No. 2012 of 1999 heard and determined. The Plaintiff has not controverted the Defendant's contention that the Plaintiff's application to join Nairobi HCCC No. 2012 of 1999 as a party was rejected by the court. The Plaintiff has not demonstrated that the Defendant has been delaying the prosecution of that case or that it is to blame for the delay in the determination of the case.

Due to the foregoing, I find no merit in the Notice of Motion application dated 9th May, 2017. The application is dismissed with costs to the Defendant.

Delivered and Dated at Nairobi this 3rd Day of May, 2018

S. OKONG'O

JUDGE

Ruling delivered in open court in the presence of:

No appearance for the Plaintiff

Mr. Aguko for Michira for the Defendant

Catherine Court Assistant