



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 77 OF 2012**

**SAMMY KARANJA MAINA ..... PLAINTIFF/APPLICANT**

**VERSUS**

**BERNARD MURAGE MURIITHI ..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**GERISHON KIBUGI GACHAGI ..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

**Order 17 Rule 2 (1) of the Civil Procedure Rules** grants the Court the power to dismiss any suit in which no application has been made or step taken by either party **"for one year"**. It reads as follows:

***"In any suit in which no application has been made or step taken by either party for one year, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit"***. Emphasis added

This suit is quite old having been filed originally at the High Court in Embu on 19<sup>th</sup> October 2007 before being transferred to this Court on 7<sup>th</sup> November 2012. On 12<sup>th</sup> November 2014, this Court dismissed the suit for want of prosecution but that dismissal order was set aside on 13<sup>th</sup> October 2015 after it was found that the failure to prosecute it was due to the mistake by counsel for the plaintiff. The parties were however directed to take the earliest hearing dates in the registry once the diary for 2016 was opened. That appears not to have been complied with and instead, by an application dated 21<sup>st</sup> October 2016 and filed herein on 31<sup>st</sup> October 2016, the plaintiff sought an order to enjoin one **JOHN WANJOHI NGUSI** as a 3<sup>rd</sup> defendant. That application was, by consent of the parties, allowed on 30<sup>th</sup> November 2016.

Meanwhile, by a notice dated 14<sup>th</sup> July 2017, the Deputy Registrar notified the parties that this suit would be listed for dismissal on 30<sup>th</sup> November 2017 under the provisions of **Order 17 Rule 2 (1) of the Civil Procedure Rules** as no action had been taken to prosecute it. When the parties appeared before me on 31<sup>st</sup> January 2018 pursuant to that dismissal notice, counsel for the defendants, **Mr. NGIGI**, informed the Court that notwithstanding this Court's orders reinstating the plaintiff's suit, no action had been taken to prosecute the suit. In response, counsel for the plaintiff, **Mr. MOMANYI** told the Court that the plaintiff had been threatened but is now keen in prosecuting this suit.

Although the plaintiff's explanation for expediting the hearing of this suit does not appear to be plausible, it is clear from the record however that this suit has not yet contravened the provisions of **Order 17 Rule 2 (1) of the Civil Procedure Rules**. It is clear that after the Court's ruling dated 26<sup>th</sup> October 2015, the defendants counsel took a date in the registry for hearing of the suit on 16<sup>th</sup> February 2016 but the Court was not sitting on that day. A fresh date was then taken by consent for hearing on 24<sup>th</sup> May 2016 but it was put off to 31<sup>st</sup> October 2016 as I was engaged in the Auctioneers Licensing Board meeting. On 31<sup>st</sup> October 2016 however, the plaintiff filed an application to enjoin a 3<sup>rd</sup> defendant. That application was allowed by consent.

In the circumstances, it is clear that the notice dated 14<sup>th</sup> July 2017 notifying the parties that this suit was due for dismissal under the provisions of **Order 17 Rule 2 (1) of the Civil Procedure Rules** was issued prematurely because following this Court's ruling dated 26<sup>th</sup> October 2015, the defendant took a hearing date for hearing of the suit on 16<sup>th</sup> February 2016. On that date however, the Court was engaged in other duties and the parties by consent, took another hearing date for 24<sup>th</sup> May 2016 when the Court was again engaged elsewhere.

The Notice for dismissal dated 14<sup>th</sup> July 2017 is hereby withdrawn.

The parties are hereby once again directed to take the earliest available hearing date in view of the age of this suit.

**B.N. OLAO**

**JUDGE**

**7<sup>TH</sup> MAY, 2018**

Ruling dated and signed at Bungoma this 7<sup>th</sup> day of May 2018.

Read and Delivered this 26th Day of June 2018

**S.N Mukunya**

**JUDGE**

**26TH JUNE, 2018**