



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO.135 OF 2012**

**STEPHEN KANIU MUCHIRI.....PLAINTIFF**

**VERSUS**

**MICHAEL NJUGUNA MUCHIRI.....DEFENDANT**

**RULING**

***(Application for dismissal of suit for want of prosecution; clear that the plaintiff has lost interest in the case; application allowed and suit dismissed with costs).***

1. The application before me is that dated 21 September 2016 filed by the defendant. The application is brought pursuant to the provisions of Order 17 Rule 2 (1) and (3) and seeks that the plaintiff's suit be dismissed with costs for want of prosecution. Despite being served, the plaintiff did not file anything to oppose the motion, although at the hearing of the motion, Mr. Gatonye, who held brief for Mr. Hari Gakinya, learned counsel for the plaintiff, did plead with me not to dismiss the suit.

2. I have gone through the record of the case. The suit itself was commenced by way of a plaint which was filed on 6 May 2010 through the law firm of M/s Hari Gakinya & Company Advocates. The plaintiff pleaded that on 9 April 2010, the defendant accompanied by police officers, a surveyor and others, entered into the plaintiff's land identified as Nyandarua Progress Agencies Limited Solai Plot No. 1248, and proceeded to demarcate an acre thereof, claiming that it belongs to the defendant. It is the view of the plaintiff that this was done illegally, and in his suit, he asked for orders of eviction of the defendant and an order to stop the defendant from trespassing upon the said land.

3. The applicant entered appearance through the law firm of M/s Sheth & Wathigo Advocates and filed defence. In the defence, he denied that the plaintiff is the owner of the suit land. He pleaded that what he did was to execute an order of a competent Land Dispute Tribunal. He asked that the plaintiff's suit be dismissed with costs.

4. Alongside the plaint, the plaintiff did file an application for an interlocutory injunction seeking to restrain the applicant from the suit land pending the hearing and determination of the case. That application was withdrawn on 1 November 2010. The matter was then scheduled for hearing on 18 March 2013 before Hon Justice Lucy Waithaka but the plaintiff was not present in court. Counsel for the plaintiff sought an adjournment which was opposed by counsel for the applicant but the same was granted. The court also noted that the plaintiff had not complied with the Civil Procedure Rules on filing documents and statements and was directed to do so. The plaintiff's counsel thereafter, on 22 January 2014, took a mention date of 18 July 2014, but nothing much transpired in court and the parties were directed to attend court on 19 December 2014 for another mention of the case. On 16 December 2014, the plaintiff's counsel took a date of 18 June 2015 for mention of the case but I have not seen any record for that date. The matter then went quiet until the defendant filed this application on 21 September 2016.

5. The provisions of Order 17 Rule 2 under which this application is premised, provide as follows :-

***2. Notice to show cause why suit should not be dismissed [Order 17, rule 2.]***

*(1) 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.*

*(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.*

*(3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.*

*(4) The court may dismiss the suit for non-compliance with any direction given under this Order.*

6. It will be observed from the above, that where one year lapses before the plaintiff moves the court, the other party is at liberty to apply for the dismissal of the suit. In the instance of this case, I do observe that the last time the plaintiff attempted to move the court was on 16 December 2014 when the plaintiff was given the date of 18 June 2015 for mention. He has not moved the court since then. One year had certainly lapsed from the last court activity before this application was filed and the application is therefore properly before court.

7. The plaintiff has not filed anything to respond to this application and has thus not given any explanation as to why he has not moved court to prosecute his matter. I note that this case has been in the court shelves for about 8 years now without any serious attempt to have it heard. If indeed the plaintiff was interested in pursuing his case, he should have at least filed a replying affidavit to explain himself. He has not done so and it is apparent to me that he has lost interest in the matter. His absence in court when this application was prosecuted is further evidence that he is not keen with this case. There is no purpose in keeping files in the court shelves when the party who has commenced the suit has no interest in prosecuting the case.

8. Given the above, I have no hesitation in dismissing the plaintiff's suit for want of prosecution. The defendant will have the costs of the suit.

9. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of June 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

Mr. Kisilah for the defendant/applicant.

No appearance on the part of M/s Hari Gakinya & Company Advocates, for the plaintiff/respondent.

Court Assistant: Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**