

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 364 OF 2014

CONSTANTINE J. KANGOGO

(Legal Representative of the Estate of Wilfred Kimaiyo Mondy).....PLAINTIFF

VERSUS

FESTUS RUTTO TAILEM.....1ST DEFENDANT

EDINAH JEPKOECH.....2ND DEFENDANT

RULING

The 1st defendant applies to dismiss the suit herein for want of prosecution on grounds that more than one year has lapsed without the plaintiff setting the suit down for hearing.

The plaintiff in reply claims that she has been going to see her advocates in the matter and that she is advised by the advocates that the matter be transferred to the Lower Court.

I do find the plaintiff's explanation for the delay insufficient as the case has stalled for more than 12 months. There is no application to transfer the matter to the Lower Court.

However, since the plaintiff has approached the seat of justice in good faith, I do decline to grant the orders sought in the application. Moreover, it appears the delay has been occasioned by counsel and I do not intend to punish the plaintiff for the mistake of counsel. However, I do grant the defendant costs of Kshs. 5,000 to be paid before the next hearing. The matter is set down for hearing on 26.2.2019.

Dated, signed and delivered at Eldoret this 30th day of July, 2018.

A. OMBWAYO

JUDGE