

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 267 OF 2013

NICHOLAS INZIANO MUGAIZI.....1ST PLAINTIFF

CATHARINE NYANGASI.....2ND PLAINTIFF

VERSUS

KENYA INDUSTRIAL ESTATES.....DEFENDANT

RULING

The application herein is dated 14.12.2017 and seeks orders that the plaintiffs' suit be dismissed for want of prosecution. The defendant states the plaintiffs' suit was filed on 25.3.2013. The plaintiffs have not taken any action for over 2 years. The plaintiffs have not taken a hearing date or moved the court appropriately. The plaintiffs state that there are culpable inordinate and flagrant delays in prosecuting the matter. In the interest of justice, the matter should come to an end according to the plaintiffs.

In the replying affidavit, the plaintiff, Nicholas Inziano Mugaizi states that he was first represented by M/s Cheluget & Company Advocates until 25.4.2013 when he filed a notice to act in person.

On 8.10.2015, he decided to act in person when he learnt that his advocate had become the speaker of the County Assembly, Elgeyo Marakwet. He took a step and acted in person and engaged the defendant in A.D.R. He later appointed the firm of Esikuri to act on his behalf. He waited for Mr. Esikuri to notify him of a hearing date but to no avail. He continued to engage the defendant in settlement. He paid the full principle debt and was issued with a discharge and clearance certificate. He engaged the respondent for out of court settlement and discharge of title deed. However, he received further notices seeking for payment. He has constantly engaged the defendant for payment and settlement out of court. He lost touch with his legal representatives but now has Kagunza & Associates who are willing to move with speed.

I have considered the application and the supporting affidavit, replying affidavit and do find that this matter was last in court on 30.11.2015 before the filing of this application. On the said date, Mr. Langat informed the court that there was no settlement and therefore, the matter was referred back to the registry.

From that date, no action has been taken by the plaintiff. A delay of about 23 months is inordinate. The reasons given for the delay are that parties have been negotiating, however, Mr. Langat denied that there were any negotiations. The last letter written by Esikuri & Company Advocates was dated 26.5.2016 addressed to K.I.E. After the letter, the plaintiff went to sleep and was woken up by the defendant more than 12 months later with the application for dismissal for want of prosecution. I do find that the plaintiff is guilty of laches and the suit herein is dismissed for want of prosecution. Costs to the defendant.

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

A. OMBWAYO

JUDGE