



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 331 OF 2016

BARTONJO KIPKECH.....PLAINTIFF

VERSUS

BEATRICE WAMBUI JOHN.....1ST DEFENDANT

CONSOLIDATED BANK LTD.....2ND DEFENDANT

LEGACY AUCTIONEERING SERVICES.....3RD DEFENDANT

RULING

1. By Notice of Motion dated 18th July 2018, the 2nd defendant seeks an Order that this suit be dismissed with costs for want of prosecution. The application is brought under Order 17 rule 2(1) and 3 of the Civil Procedure Rules, among other provisions of law.
2. The application is supported by an affidavit sworn by Kabaya Kakunde Tembo, the service Quality Manager of the 2nd Defendant at its Nakuru Branch. He deposed that since filing the suit, the plaintiff has not taken any step to prosecute it.
3. The plaintiff did not attend court or oppose the application despite being served. In the circumstances, counsel for the 2nd defendant urged the court to allow the application.
4. Order 17 rule 2 of the Civil Procedure Rules provides:

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.

5. A perusal of the record herein reveals that upon being served with the plaint the 2nd defendant filed defence and took several other steps in the matter. The 1st and 3rd defendants have however not filed anything. The record further reveals that counsel for the plaintiff has only attended court once, on 18th August 2016 when the matter came up under certificate of urgency. Since then, the matter has come up on at least two other occasions yet counsel for the plaintiff has not attended court on those dates. There has been no appearance for the plaintiff on all those subsequent court dates.

6. In the circumstances, I am persuaded that this is a fit and proper case in which to grant the orders sought. I therefore dismiss this suit for want of prosecution, with costs to the 2nd defendant. I also award costs of Notice of Motion dated 18th July 2018 to the 2nd defendant.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 28th day of September 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Khalayi for the 2nd defendant/applicant

No appearance for the plaintiff/respondent

No appearance for the 1st and 3rd defendants

Court Assistant: Gichaba