



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 109 OF 2015

RICHARD KIPROTICH KENDUIYWO

(Suing as the legal representative of the Estate of

SAWE MARGERO KARCHOK (Deceased).....PLAINTIFF

VERSUS

MEMBER OF COUNTY ASSEMBLY

TUWAN WARD1ST DEFENDANT

CHIEF OFFICER-LANDS, HOUSING &

PHYSICAL PLANNING,

TRANS-NZOIA COUNTY.....2ND DEFENDANT/APPLICANT

ASSISTANT CHIEF

TUWAN SUB-LOCATION.....3RD DEFENDANT

R U L I N G

1. The suit before me was filed on **1/9/2015**. On **13/4/2018** the 2nd defendant lodged an application seeking its dismissal. The grounds on which that application is made are that it is over **2 years** since the suit was last in court on **16/2/2018**.
2. The application is supported by the affidavit of Karani O. Aggrey Advocate sworn on **13/4/2018** which reiterates the grounds at the foot of the application. The deponent avers that it is clear that the plaintiff has lost interest in the suit, that the plaintiff's claim is hopeless unfounded and unsustainable.
3. The plaintiff terminated the services of his erstwhile advocates vide a notice to act in person filed on 2/7/2018 and filed a replying affidavit dated 17/7/2018 in response to the application.
4. He admitted the 2 year delay. He also blamed it upon his counsel who he states he never took steps to inform him of the status of the case. He avers that works with the Kenya Defence Forces and exhibits as RKK2 a copy of his passport showing he left Kenya for Somalia on 7/12/2016.

5. He also states that he hired the services of another firm of advocates who also let him down despite having paid them. He denies that he has lost interest in the matter. He pleads that mistake of counsel should not be visited upon an innocent litigant and that a party should not be condemned unheard.

6. There was no reply by the defendants to the factual allegations in this affidavit and I presume them to be true. The court takes judicial notice that the international peace-keeping mission in Somalia has been ongoing for some years now. It is a noble cause meant to secure international communities from the threat of terrorism. Being involved therein should be deemed a sign of patriotism. In my view the plaintiff has given a good reason why the suit should not be dismissed for want of prosecution. However, the dispute between him and the defendants must be resolved in a just and fair manner that does not entail any further delay.

7. For the above reasons, I hereby dismiss the application dated **13/4/2018** and order that the parties shall appear before this court for directions on the plaintiff's application dated **2nd July 2018** and also directions on the hearing of the main suit on the **18th September 2018** at **2.00 p.m.** Costs of the dismissed application shall be in the cause.

Dated, signed and delivered at Kitale on this **18th** day of **September, 2018.**

MWANGI NJOROGE

JUDGE

18/9/2018

Coram: Before Mwangi Njoroge, Judge

Court Assistant - Picoty

Plaintiff in person

N/A for the defendants

COURT

Ruling delivered in open court.

MWANGI NJOROGE

JUDGE

18/9/2018