



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO 901 OF 2015

JOSEPH NDIRANGU MWANGI.....PLAINTIFF/RESPONDENT

VERSUS

JOHNSON MUGWE MWANGI.....1ST DEFENDANT/APPLICANT

ISAAC KARANJA MWANGI.....2ND DEFENDANT/APPLICANT

JOYCE MUMBI MWANGI.....3RD DEFENDANT/APPLICANT

BETH WAMBUI MWANGI.....4TH DEFENDANT/APPLICANT

RULING

1. This is the Notice of Motion dated 10th March 2015. It is brought under Section 1A, 1B and 63 (e) of the Civil Procedure Act Chapter 21 Laws of Kenya, Order 17 Rule 2(3), Order 51 Rule 1 of the Civil Procedure rules and all other enabling provisions of law.

2. It seeks orders:-

(1) That the plaintiff/applicant's application dated 5th March 2012 and the entire suit against the defendants be dismissed with costs for want of prosecution

(2) That the costs of this application and the entire suit be awarded to the defendants.

3. The ground are in the face of the application and are:-

(a) The plaintiff/respondent herein has acquiesced on his right to prosecute this matter for far too long now.

(b) That the negligence and or failure to set down the suit for hearing has persisted for over 1 ½ years now.

(c) That captivately the plaintiff/respondent commenced this matter by way of a Notice of Motion Application dated 5th March 2012 brought under a certificate of urgency dated 5th March 2012.

(d) That in totality the plaintiff has lost interest and or abandoned his case against the defendants.

4. The application is supported by the affidavit of Susan Mbaire Kahoya, advocate for the 1st and 2nd defendants, sworn on the 10th March 2015.

5. Despite being served with this application, the plaintiff/respondent neglected and/or refused to file responses and/or written submissions. On the 18th October 2016, Mr. Nyasani for the plaintiff/respondent was granted leave to file a replying affidavit and written submissions within 14 days. To date the plaintiff/respondent has not filed any response or written submissions.

6. I have gone through the court record. The plaintiff/respondent came to court under a certificate of urgency on 5th March 2012. To date the application has not been set down for hearing.

7. I have considered the defendants'/applicants' application and the submissions. The issue for determination is:-

(i) Whether the plaintiff/s application dated 5th March 2012 and the entire suit against the defendant/applicants herein should be dismissed for want of prosecution;

(ii) Who should bear costs of the application?

8. Order 17 Rule 2(1) of the Civil Procedure Rules provides as follows:-

“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”

Order 17 rule 2 (3) provides as follows:-

“Any party to the suit may apply for its dismissal as provided in sub-rule 1.”

9. As it stands the plaintiff/respondent has taken no steps to prosecute the application or set down the suit/for hearing for more than two (2) years.

10. It is clear that the plaintiff/respondent has lost interest in his case. The Court of Appeal held in the case of **Rajesh Rughani vs Fifty Investments Limited & Another**; that:-

“Our re-evaluation of the record leads us to conclude that no credible, satisfactory and sufficient explanation for delay has been given. It is insufficient to blame previous counsel on record without an explanation as to the action taken by the litigant to show he did not condone or collude in the delay. It is our considered view that the judge did not err in finding that the delay was not only inordinate but unexplained. Guided by the dicta of this court in Habo Agencies Limited vs Wilfred Odhiambo Musingo (2015) eKLR and in Mwangi v Kariuki (1999) LLR 2632 (CAK), we come to the conclusion that this appeal has no merit and is hereby dismissed with costs.”

11. I find that the plaintiff/respondent has been indolent in prosecution his suit against the defendants.

12. I find merit in this application and the same is allowed in the following terms:-

(a) That the plaintiff/applicant's application dated 5th March 2012 and the entire suit against the defendants is hereby dismissed for want of prosecution.

(b) The costs of this application and the entire suit are awarded to the defendants.

It is so ordered.

Dated, signed and delivered in Nairobi on this 31ST day of OCTOBER 2018

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L. KOMINGOI

JUDGE