



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 498 OF 2013

MIRIAM WANGUI NGACHU.....PLAINTIFF

VERSUS

JULIUS NDUNG'U THANGWA.....1ST DEFENDANT

NANCY NYAMBURA.....2ND DEFENDANT

ALEX NJUGUNA NDUNG'U..... 3RD DEFENDANT

NAIVASHA DISTRICT LAND REGISTRAR....4TH DEFENDANT

RULING

1. By Notice of Motion dated 31st May 2017, the 2nd and 3rd defendants seek dismissal of this suit with costs for want of prosecution. The application was supported by an affidavit sworn by Joseph Karanja Mbugua, advocate. He deposed that despite filing this suit way back on 8th August 2013, the plaintiff has failed to prosecute it. He therefore urged the court to dismiss it.

2. Though served her advocates on record, the defendant neither filed anything in response to the application nor attended its hearing.

3. I have considered the application which is essentially unopposed. It was brought under **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.

4. Upon perusing the record herein, I note that indeed, the plaintiff has not taken any step to prosecute the suit since it was filed on 14th August 2013. Even Notice of Motion dated 8th August 2013 which the plaintiff filed under Certificate of Urgency seeking an injunction remains unprosecuted. In the circumstances, I find that this is a fit and proper case in which an order for dismissal for want of prosecution should issue.

5. The applicants have urged the court to award them costs. Costs generally follow the event unless the court orders otherwise. At the end of the day, costs are at the discretion of the court. Needless to state, discretion must be exercised judiciously. I note upon perusal of the plaintiff stated that the 2nd defendant and her were married to the 1st defendant under Kikuyu Customary Law. The 3rd defendant is the son of the 1st and 2nd defendants. In essence therefore, the suit pits close family members against each other. So as not to fray family bonds any further and so as to avoid creating a new point of friction within the family, I will not award any costs.

6. In the end, I dismiss this suit for want of prosecution. Each party to bear own costs.

Dated, signed and delivered in open court at Nakuru this 30th day of October 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Karanja for the 2nd & 3rd defendants/applicants

No appearance for the plaintiff/respondent

No appearance for the 1st defendant

Court Assistants: Gichaba & Lotkomoi