



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.252 OF 2018

SETH FREDRICK OCHIENG OWINO.....PLAINTIFF

VERSUS

HOUSING FINANCE COMPANY OF KENYADEFENDANT

RULING

(Application for dismissal of suit for want of prosecution; no action taken by plaintiff for over 7 years; application allowed; plaintiff's suit dismissed with costs)

1. The application before me is that dated 14 January 2016 filed by the defendant. It is an application brought pursuant to the provisions of Order 17 Rule 2(3) of the Civil Procedure Rules, and the principal order sought is the dismissal of the plaintiff's suit for want of prosecution. No response has been filed to the application.
2. I have perused the record. I note that this suit was commenced by way of a plaint which was filed on 7 February 2002. In the suit, the plaintiff's chief complaint was that the defendant, a financial institution, wrongfully sold his land parcel Njoro/Njoro Block 5/125 in exercise of its statutory power of sale. The plaint was later amended on 19 June 2002 after which the defendant filed an amended defence on 17 July 2002. Not much has happened in the case save for a few mentions terminating in the plaintiff taking a hearing date on 17 December 2010 for hearing on 3 May 2011 but the file seems not to have been taken to court on that day. Since then, the plaintiff has not taken any steps to move this matter.
3. Order 17 Rule 2 is applicable and the same provides that where no step is taken in a matter for more than one year, the other party is at liberty to apply for its dismissal. That is precisely what the defendant has now done.
4. As I have mentioned, no response was filed by the plaintiff to oppose the motion or show cause why the case should not be dismissed for want of prosecution. Mr. Odundo, who appeared for the plaintiff at the hearing of this motion stated that for seven years their office has not seen the respondent and they have been unable to trace him. Clearly, if the plaintiff was interested in pursuing this matter, he would have actively sourced out his counsel for the matter to progress. This suit has been lying in the court shelves for the last 16 years and I do not see any hope of the plaintiff prosecuting it. It is apparent to me that the plaintiff has lost interest in the suit.
5. I therefore allow this application and proceed to dismiss this case for want of prosecution with costs to the defendant.
6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 23rd day of October 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Kibet holding brief for Mr. Kisilah for the defendant/applicant.

No appearance on the part of M/s Odhiambo & Odhiambo Advocates for the plaintiff/respondent.

Court Assistants: Nelima/Carlton.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU