

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 218 OF 2018

AGNES NANJALA WILLIAM....PLAINTIFF/RESPONDENT

-VERSUS-

RENE BROUWER.....DEFENDANT/APPLICANT

RULING

1. For determination is the motion dated 19th April 2018 brought under the provisions of section 3A and 63 (e) of the Civil Procedure Act and order 17 rule 2 and Order 51 rule 1 of the Civil Procedure Rules seeking for orders:

(1) This matter be dismissed for want of prosecution.

(2) Costs of the application be provided.

2. The defendant/applicant avers that the plaintiff has not taken steps to prosecute this case for a period of one year. The defendant/applicant deposed that he filed his statement of defence on 24th August 2016. That the plaintiff's application dated 10th August 2016 was dismissed on 12th July 2017 and since the delivery of the ruling, no steps have been taken towards prosecuting this matter. He urged the Court to allow this application.

3. The application is opposed by the plaintiff in her replying affidavit sworn on 27th June 2018. The plaintiff deposed that pursuant to the ruling of the Court of 12.7.2017, she decided to wait for the outcome of the succession process of the estate of Jacobus Petrus Nicolas Vander Goes before engaging in any further substantive proceedings. The plaintiff also deposed that the defendant has deliberately failed to disclose to this Court if there is any progress made in appointing administrators of the deceased estate. It is her contention that the application herein is made in bad faith and that the delay in prosecuting this matter is neither inordinate or inexcusable. She urged the Court to dismiss the motion.

4. Order 17 rule 2 (1) of the Civil Procedure Rules provides for dismissal of suits for want of prosecution. Where cause is shown, the Court may make such orders as it thinks fit to obtain expeditious hearing of the suit. In this matter, a ruling on an interlocutory application was delivered on 12.7.2017. By the time this application was filed on 19th April 2018, one year had not lapsed from the date of the last Court action.

5. In the replying affidavit filed by the defendant on 15.8.16, he stated that Jacobus P. Nicolas had not been confirmed dead as at 15.8.2016. The defendant also stated that the process of taking out letters of administration had not been commenced. It thus smacks bad faith for the defendant to want to have this suit prosecuted and at the same time blame the plaintiff for filing the proceedings at a time when the family of Jacobus were said to have been undergoing emotional stress.

6. Consequently on account that one year has not lapsed from the time the matter was lastly in Court and further for the reasons given by the plaintiff that she is waiting the appointment of an administrator of the estate of Jacobus – deceased, I come to a finding that this application is premature and is devoid of merit. The same is dismissed with costs ordered in the cause.

Dated, signed & delivered at Mombasa this 16th October 2018

A. OMOLLO

JUDGE