

REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT IN MOMBASA

ELC CASE NO. 197 OF 2008

SAID MUBARAK AWADH.....PLAINTIFF/RESPONDENT

VERSUS

GILBERT MWAGANDA

FRANCIS GAMBO BEGAMBO.....DEFENDANTS/ APPLICANTS

RULING

This Notice of Motion is dated 26th March 2018 and is brought under Section 1A, 1B, 3A and 63 of the Civil Procedure Act and under order 17 Rule 2(3) of the Civil Procedure Rules seeking the following orders;

1. That the suit commenced vide a plaint dated 6th August, 2008 be dismissed for want of prosecution.
2. That costs of this application be provided for.

The Applicant submitted that the suit has taken over 2 years without being fixed for hearing. That the pendency of this matter in court is both prejudicial as well as an otherwise abuse of the court process, hence this application. That no prejudice shall be suffered to any party if this suit is dismissed.

The respondent submitted that this application is an abuse of the court process having been filed in March 2018 after this matter was fixed for hearing. That the plaintiff was in court with three witnesses and was ready to proceed and this application was never served on them. That the plaintiff is old and sickly and is ready to proceed with the matter.

This court has perused the court file and sees no evidence that the respondent was ever served with the application on the dismissal of this matter. Both parties were present in court on the hearing date given by the court. It is in court that the respondent was served with the application. Indeed I agree with the respondent that this application is an abuse of the court process and I dismiss it. Costs to be in the cause.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MOMBASA IN OPEN COURT THIS 8TH NOVEMBER 2018.

N.A. MATHEKA

JUDGE