

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 21 OF 2017

SERVE IN LOVE AFRICA (SILA) TRUST.....PLAINTIFF

VERSUS

ABRAHAM KIPTARUS KIPTOO.....1ST DEFENDANT

PATRICK KIPKOSGEI KIBET.....2ND DEFENDANT

DAVID KIPSANG KIPYEGO.....3RD DEFENDANT

RULING

The application before court is dated 29.10.2018 whereon the applicant prays that the suit herein be dismissed for want of prosecution and that in the alternative, the interlocutory orders of injunction issued on 18.10.2017 be discharged and or vacated. The application is supported by the affidavit of Abraham Kiptarus Kiptoo who states that the plaintiff moved to court and secured orders of injunction on 18.10.2017. No action has been taken by the plaintiff to prosecute the suit for 12 months. It appears that the plaintiff has lost interest in the suit. The pendency of the suit is prejudiced to the defendant's enjoyment of the property. The plaintiff in response to the application states that the plaintiff is keen to have the case heard and determined on merit. The injunction should be extended in the interest of the orders of justice.

I have considered the provisions of Order 11 of the Civil Procedure Rules on pre-trial directions and conferences and do find that though the pleadings were closed, pre-trial directions and conferences have not been complied with and therefore, the suit is pre-mature for dismissal. According to Order 11 of the Civil Procedure Act, Order 11, Rule 1, after the close of the pleadings parties shall within ten days complete, file and serve the pre-trial questionnaire as provided in Appendix B and Order 11, Rule 3, with a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall consider compliance with Order 3 Rule 2 and Order 7 Rule 5, identify contested and uncontested issues, explore methods to resolve the contested issues, where possible secure parties' agreement on a specific schedule of events in the proceedings. These proceedings have not been undertaken and therefore the defendant ought to have moved the court to ensure that these processes are complied with and not to apply for dismissal of suit. Therefore, application for dismissal is disallowed.

However, the interlocutory orders of injunction herein have lapsed by operation of the law by virtue of Order 40, Rule 6 of the Civil Procedure Rules. This rule provides as follows: -

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.”

The upshot of the above is an order that the injunction issued on 18th October, 2017 is deemed as having lapsed. Orders accordingly.

Dated and delivered at Eldoret this 5th day of December, 2018.

A. OMBWAYO

JUDGE