



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE No. 118 OF 2014 (OS)**

**PHILIS NYAMBURA NDEGWA.....APPLICANT**

**VERSUS**

**JOSEPHAT NYAMU.....1<sup>ST</sup> RESPONDENT**

**PATRICK GITAU MATINDI.....2<sup>ND</sup> RESPONDENT**

**RULING**

***(Notice to show cause why a suit should not be dismissed under Order 17 rule 2; applicant had argued that court's diary was full; no evidence of attempts to get a date; applicant failed to show cause; suit dismissed)***

1. On 18<sup>th</sup> February 2017, the Deputy Registrar of this court issued to the parties herein notice to attend court on 29<sup>th</sup> March 2017 to show cause why the suit should not be dismissed under Order 17 rule 2 of the Civil Procedure Rules.

2. The suit herein was filed on 4<sup>th</sup> June 2014 as an Originating Summons and along with it an application for injunction under certificate of urgency. The certificate of urgency was not argued until 16<sup>th</sup> October 2014 when the applicant filed yet another certificate of urgency. The court declined to certify the matter urgent. The matter has had no other activity since 16<sup>th</sup> October 2014.

3. Order 17 rule 2 states

*Notice to show cause why suit should not be dismissed*

*(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) The court may dismiss the suit for non-compliance with any direction given under this Order.*

4. It follows that under the rule, the court may upon issuing a notice to show cause, dismiss any suit in which no application has been made or step taken by either party for one year, if cause is not shown to its satisfaction.

5. Counsel for the applicant attended court at the hearing of the notice to show cause and urged the court not to dismiss the suit. Counsel submitted that the applicant is still interested in prosecuting the suit but no dates have been available since the court's diary is full.

6. Counsel for the second defendant submitted that this being a suit commenced by way of Originating Summons directions ought to have been taken as to how the hearing will proceed. That the plaintiff has not ensured that directions are taken. That the plaintiff has never invited them for fixing as a way of showing willingness to prosecute the matter.

7. I have considered the notice to show cause and counsels' submissions. Even if there were no dates available at the registry the applicant ought to show the court that efforts to fix the pending application or the main matter had been made. It is not enough to just claim that dates were not available. A congested court diary is irrelevant to a party not keen on prosecuting his case. Specific evidence is needed to help the court determine the issue on the merits. The applicant didn't avail such evidence.

8. A suit commenced under certificate of urgency should always be prosecuted with the priority that was sought at inception. The applicant has failed to show cause to the satisfaction of the court that this suit ought not to be dismissed. I therefore dismiss the suit with costs to the 2<sup>nd</sup> defendant.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 30<sup>th</sup> day of March 2017.

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Wanga holding brief for Mr. Simiyu for the applicant

No appearance for the 1<sup>st</sup> respondent

No appearance for the 2<sup>nd</sup> respondent

Court Assistant: Gichaba