



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 593 OF 2013

NICHOLAS KIARIE NJAU.....PLAINTIFF

VERSUS

NAKURU COUNTY GOVERNMENT.....1ST DEFENDANT

HON. DAVID GIKARIA.....2ND DEFENDANT

STEPHEN KURIA.....3RD DEFENDANT

FRANCIS NJOROGE.....4TH DEFENDANT

RULING

(Notice to show cause why a suit should not be dismissed

under Order 17 rule 2; plaintiff failed to show cause; suit dismissed)

1. On 18th February 2017, the Deputy Registrar issued notice to parties herein to attend court on 20th March 2017 to show cause why the suit in this matter should not be dismissed under Order 17 Rule 2 of the Civil Procedure Rules, 2010.

2. 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.

3. 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.

4. This matter was last listed on 5th June 2014. No application has been made or step taken by either party for over two years. The matter is therefore ripe for the court to give notice in writing to the parties to show cause why the suit should not be dismissed.

5. The plaintiff moved the court on 14th November 2014 seeking an injunction under certificate of urgency. The matter was certified urgent and the application for injunction was scheduled for hearing on 15th January 2015. Come 15th January 2015, the parties agreed to dispose of the application by way of written submissions. Directions were given for filing and exchanging submissions. The submissions have so far not been filed.

6. Counsel for the plaintiff has urged the court not to dismiss the matter. He has submitted that the court's diary has been full and that it was therefore not possible to get a hearing date despite the plaintiff being keen to prosecute the matter. Counsel further submitted that the counsel who previously handled the matter was appointed to a county government position in the year 2015 and that since the new counsel took over in 2015, he had not been able to review his office file so as to determine the next cause of action. He was only able to review the file once served with the Notice to show cause.

7. Counsel for the 2nd defendant urged the court to dismiss the suit for want of prosecution. He submitted that it had taken inordinately long to prosecute the pending application and the matter generally. Counsel further submitted that there is no valid reason why counsel for the plaintiff had not reviewed the file since the year 2015.

8. I have considered submissions of counsels. Even though I am aware that the court's diary has been congested, it is not enough for a party to cite the issue of a busy diary without showing specific incidences when the party sought a date from the registry without success. A litigant who is proactive will easily show by way of letters to the court or invitations to opposing counsel to attend fixing that he had made efforts to get hearing dates at the registry. No such evidence has been availed here. The court record shows that there has been zero activity on the file by the plaintiff since 5th June 2014.

9. Parties keep citing the fact that the court's diary is full as a reason for not prosecuting their matters. Whether or not the diary is full is a question of fact which needs some evidence to be established. Even if it is established, only parties who have shown that they were actively seeking dates can be deemed to have shown cause to the satisfaction of the court that their suit ought not be dismissed.

10. In a suit where the plaintiff has moved the court seeking an injunction under certificate of urgency, it is of paramount importance that the plaintiff shows eagerness to prosecute both the application and the suit. I have not seen eagerness and haste on the part of the plaintiff. From the submissions of counsel for the plaintiff, it is manifest that the plaintiff has not called on his advocates for two years. Had he been proactive with his advocates there would perhaps been some progress in the matter.

11. The plaintiff has failed to show cause to the satisfaction of the court that this suit ought not be dismissed. In the circumstances, this is a fit and proper case for dismissal under Order 17 rule 2 of the Civil Procedure Rule, 2010.

12. I accordingly dismiss the suit with costs to the 2nd defendant.

13. It is so ordered.

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

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff

No appearance for the 1st defendant

Ms. Chepkwony holding brief for Mr. Mbeche for the 2nd defendant

No appearance for the 3rd and 4th defendants

Court Assistant: Gichaba