



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 93 OF 2013

JOHN MAINA & 23 OTHERSPLAINTIFFS

VERSUS

SETTLEMENT FUND TRUSTEES.....1ST DEFENDANT

NGARI MAIHU.....2ND DEFENDANT

ALFRED JOMBA.....3RD DEFENDANT

RULING

(Notice to show cause why a suit should not be dismissed under Order 17 rule 2; plaintiffs showed through a replying affidavit that though they had made efforts to fix the matter for hearing, dates were not available at the registry since the court's diary was full; cause shown, suit not dismissed)

1. On 18th February 2017, the Deputy Registrar of this court issued to the parties herein notice to attend court on 20th 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 in January 2013 and the matter was last in the cause list on 20th February 2014. None of the parties attended court on that date.

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. On 20th March 2017 only counsel for the plaintiffs attended court and relying on a Replying Affidavit sworn by Kipkoech B. Ngetich urged the court not to dismiss the suit.

6. Kipkoech B. Ngetich deposed that the plaintiffs' desire to fix the matter for hearing were frustrated by their previous counsel on record as a result of which the plaintiffs instructed a new firm of advocates who filed Notice of Change of Advocates on 10th June 2016. That the new firm of advocates made efforts to fix the matter for hearing but were advised by the registry that dates were not available. As testimony to this, copies of letters to the Deputy Registrar of the court dated 24th June 2016 and another dated 8th November 2016 were exhibited.

7. I have considered the notice to show cause and counsel's submissions. I am satisfied that the plaintiffs have shown sufficient cause. I will therefore not dismiss the suit as had been sought. Instead, I order that parties comply with Order 11 within 30 (thirty) days from the date of delivery of this ruling. I shall give a mention date for purposes of monitoring compliance upon delivery of this ruling.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 28th day of March 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Langat holding brief for Mr. Kipkoech for the plaintiffs

No appearance for the defendants

Court Assistant: Gichaba