



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 248 OF 2014

PURITY CHEROTICH TESOT.....PLAINTIFF

VERSUS

RUSI CHEPNG'ETICH LANGAT.....1ST DEFENDANT

PAUL KIPSANG KOECH.....2ND DEFENDANT

RULING

(Notice to show cause why a suit should not be dismissed under Order 17 rule 2; plaintiff argued that she is keen on prosecuting suit; plaintiff given benefit of doubt; suit not dismissed)

1. On 18th February 2017, the Deputy Registrar of this court issued to the parties herein notice to attend court on 30th 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 2nd September 2014. Alongside the plaint, the plaintiff also filed a Notice of Motion dated 19th August 2014 seeking an injunction under certificate of urgency. The application is yet to be heard inter partes. The matter has had no activity since 30th September 2014 when the application was stood over generally.
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 plaintiff responded to the notice to show cause by filing a replying affidavit sworn on 21st March 2017 by Kipkoech B. Ng'etich. Counsel urged the court not to dismiss the suit and submitted that the plaintiff is still interested in prosecuting the suit but the defendants have so far neither entered appearance nor filed a defence. Plaintiff's advocates exhibited a letter dated 5th August 2016 to the 1st defendant forwarding to her list of issues.

6. I have considered the notice to show cause and counsel's submissions. I am not entirely convinced that the plaintiff has approached the matter with the industry it deserves. Notice of Motion dated 19th August 2014 is still pending. No explanation has been offered as to why it has not been prosecuted. The suit will not be truly ready for hearing until the pending application has been dealt with. For that reason, the plaintiff needed to do more over and above drafting and forwarding list of issues.

7. Nevertheless, I am ready to give the plaintiff the benefit of doubt. I will therefore not dismiss the suit as was sought. I order the plaintiff to take concrete steps in the next sixty (60) days to deal with the pending application and to fix the suit for hearing.

Dated, signed and delivered in open court at Nakuru this 6th day of April 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Wanga holding brief for Mr. Kipkoech for the plaintiff

No Appearance for the defendant

Court Assistant: Gichaba