



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 58 OF 2017

GRACE WANGOI KIRWA (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE

PAUL KIRWA)..... 1ST

PLAINTIFF

JOSEPH GITAU KIRWA (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE

PAUL KIRWA)..... 2ND

PLAINTIFF

VERSUS

JACKSON KIPLAGAT ARAP MELI (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE

KEMELI MBOGO SIMEON)..... 1ST

DEFENDANT

ROSELYN CHEMAIYO KENEI (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE

ELIJAH KIPTARUS KENEI)..... 2ND

DEFENDANT

ANNA JEPKOECH TENAI (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE

MICHAEL MALAKWEN ARAP TENAI)..... 3RD

DEFENDANT

DINA JEPKORIR TENAI (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE

MICHAEL MALAKWEN ARAP TENAI)..... 4TH

DEFENDANT

COMMISSIONER FOR LANDS)..... 5TH

DEFENDANT

R U L I N G

1. The applicant's application dated 16/3/2015 seeks an order that this suit be dismissed for want of prosecution by the plaintiff. The applicants aver that one year after the last adjournment of this suit generally, the plaintiff has failed to set the matter down for hearing. The application is opposed. The sworn affidavit of Ezekiel Wafula dated 4/6/2015 has been filed in opposition.

2. I have scrutinized both the application and its supporting affidavit on the one hand and the replying affidavit on the other. There is ample evidence on the record that between the years 2012 and 2013, the plaintiff put action in the matter by way of applying to be substituted in place of the deceased original plaintiff, reinstating the suit and seeking the substitution of the Commissioner of Lands with the Chief Lands Registrar.

3. They also sought orders that the Chief Lands Registrar be ordered to partition the suitland. This was done vide an application dated 6/6/2013. When the matter came up before this court on 7/10/2013, the court, upon hearing some of the parties, who were present, ordered that pending the hearing and determination of the application and the suit, the Chief Lands Registrar do inspect the suit property and report to the court the situation of the suit property as informally distributed and persons in occupation. The matter was then ordered to be mentioned on 20/11/2013 for further directions.

4. There is a request on the letterhead of E. Wafula & Associates, Advocates for the plaintiff dated 1/9/2014 and evidently received by the Deputy Registrar on the 8th September, 2014. The same requests certified copies of the order issued by the court on 10/10/2013 directing the Chief Lands Registrar to inspect the suit property and prepare a report.

5. Order 17 Rule (1) states that:

“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.

Order 17 Rule 2(3) states as follows:-

“Any party to the suit may apply for its dismissal as provided in sub-rule 1”.

It is under Order 17 Rule 2(3) that the applicants have brought the application under consideration.

6. I have noted that it is true that the application dated 6th June, 2013 was partially successful in that this court ordered the Chief Lands Registrar, who is represented in this matter by the Hon. the Attorney General, to prepare a report on the suit property. This order was issued on 10/10/2013. The said report was considered crucial by this court, hence the order. There has been no report filed to date and I find that the 5th and 6th defendant are in breach of their obligations in relation to the preparation and filing of the report on which this court and the parties can rely. Besides, as I have already indicated action appears to have been taken by one of the parties, the plaintiffs, by way of the request for the copies of the order, vide the letter dated 1/9/2014. Not more than one year envisaged by Order 17 Rule 2(1) and (3) has elapsed since the date of that request till 16/3/2015.

7. I find that the prayer for dismissal of this suit is therefore not deserved, and I hereby dismiss the application dated 16/3/2015 with costs to the respondents.

Signed, dated and delivered at Kitale on this 30th day of **May, 2017.**

MWANGI NJOROGE

JUDGE

30/05/2017

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah

N/A for the parties

Ruling read in open court.

MWANGI NJOROGE

JUDGE

30/05/2017