



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 221 OF 2009**

**PHALLICE MUTIO MUTUA**

**MARGARET NZULA MUTUA (*Suing as the***

***Administrators of the Estate of***

**BENJAMIN MUTUA MUSILA .....PLAINTIFFS/RESPONDENTS**

**VERSUS**

**THE CO-OPERATIVE BANK OF KENYA LTD.....1<sup>ST</sup> DEFENDANT**

**CHRIS MUSAU.....2<sup>ND</sup> DEFENDANT**

**DENNIS KYALO .....3<sup>RD</sup> DEFENDANT**

**RULING**

1. In the Application dated 21<sup>st</sup> January, 2014, the 1<sup>st</sup> Defendant is seeking for the following orders:
  - a. That this Honourable Court be pleased to strike out the Plaintiffs' Complaint dated 21<sup>st</sup> July, 2009 and filed on the same day; and***
  - b. That pursuant to prayer 1 above, this Honourable Court be pleased to dismiss the suit herein as against the Defendants.***
  - c. That the costs of this Application and the suit be awarded to the Defendants.***
2. The Application is based on the grounds that there cannot be injunctive orders against the Defendants with regard to matters that have already happened; that the suit has been overtaken by events and that the Complaint is scandalous, frivolous and vexatious.
3. Although the Plaintiffs' advocate was served with the Application, he did not file any response.
4. The 1<sup>st</sup> Defendant's advocate submitted that owing to the sale of the suit land, and the fact that the Complaint is premised on the same facts as the dismissed Application for injunction, the suit lacks merit and because it has remained unprosecuted for over three (3) years, the suit should be struck out.
5. This suit was filed on 27<sup>th</sup> July, 2009 by way of a Complaint dated 21<sup>st</sup> July, 2009.

6. In the Plaint, the Plaintiffs alleged that the purported auction of the suit land on 13<sup>th</sup> July, 2009 was fraudulent, null and void.

7. The Plaintiffs prayed in the Plaint for a declaration that the auction of 13<sup>th</sup> July, 2009 over the suit land was null and void. The Plaintiffs also sought for a permanent injunction.

8. The last time the matter came up in court before the current Application was filed on 21<sup>st</sup> July, 2010 was when the court declined to issue an interim injunction. The matter remained inactive until when the current Application was filed.

9. The Plaintiffs have not offered any explanation as to why they never fixed the matter for hearing after the Ruling of 21<sup>st</sup> July, 2010.

10. In the absence of any plausible explanation as to why the Plaintiffs never fixed the matter for hearing after the Application for injunction was dismissed, I find the 1<sup>st</sup> Defendant's Application dated 21<sup>st</sup> January, 2014 to be meritorious.

11. In the circumstances, I strike out the Plaintiffs' Plaint dated 21<sup>st</sup> July, 2009 with costs to the 1<sup>st</sup> Defendant.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30<sup>TH</sup> DAY OF JUNE, 2017.**

**O.A. ANGOTE**

**JUDGE**