



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 169 OF 2015**

**KENYA ANTI-CORRUPTION COMMISSION ::::::::::: PLAINTIFF/RESPONDENT**

**VERSUS**

**SHELDON LIVASIA MUGUGO ::::::::::: 1<sup>ST</sup> DEFENDANT/APPLICANT**

**WILSON GACANJA ::::::::::: 2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

This application is brought under Article 50 (1) of the constitution of Kenya and order 17 rule 2 (1 & 3) of the Civil Procedure Rules and seeks the following orders;

1. **THAT** the Civil Suit No. 82 of 2009 be and is hereby dismissed for want of prosecution.
2. **THAT** the costs of this application be in the cause.

The application is based on the affidavit of SHELDON LIVASIA MUGUGO and the following grounds; the plaintiff/respondent herein has failed to pursue this suit for more than one year now since it was set down for hearing. The delay occasioned by the plaintiff/respondent herein is inordinate. The inordinate delay is inexcusable. The defendant is likely to be prejudiced by the delay. The applicant submitted that Civil Suit No. 82 of 2009 was brought before court by the plaintiff/respondent herein. The plaintiff/respondent has since been dormant in pursuing the same for a period amounting to more than a year since it was set down for hearing.

The respondent submitted that, the plaintiff carried out investigations into the alleged illegal acquisition of land situated on Kakamega Municipality Block III/220 which was hived from Kakamega Block III/66, 67 and 69, (hereinafter the "suit property"). Upon completion of investigations, the Commission discovered that the said parcel of land constitute trust land vested in the county Council of Kakamega (hereinafter "the Council"). The said Council is registered as the proprietor of all those parcels of land known as Kakamega Municipality Block III/66, 67 and 69 from 28<sup>th</sup> December 1974 and the same had been set aside for public purposes. (Annexed are copies of abstract of title are marked 'WCR1' and 'WCR 2'. The Commissioner of Lands caused surveyors to survey and sub-divide all those parcels of land known as Kakamega/Municipality Bloc III/66, 67 and 69 to create 3 new portions and given new title numbers as Kakamega Municipality/Block III/220, 221 and 223. Annexed are copies of amended registry index map together with folio register number 292/175 marked 'WCR 3', 'WCR 4' and white card in respect of Block III/220 marked as 'WCR 5'. On or about 21<sup>st</sup> June 1996 the 2<sup>nd</sup> defendant purported to lease all that land known as Kakamega Municipality Block III/220 measuring 0.23 hectares situate in Kakamega Town to the 1<sup>st</sup> defendant. Annexed is a copy of the lease marked as 'WCR 6'. Following this discovery, the plaintiff under its statutory mandate filed numerous suits for recovery against the persons who had allegedly procured the parcels of land in a bid to recover them as they had been acquired through fraudulent and corrupt dealings. The said parcel of land was originally registered in the name of County Council of Kakamega on 28<sup>th</sup> December 1974 to hold in trust for the residents of Kakamega. Annexed are copies of white card in respect of Block III/66, 67 and 69 marked as 'WCR 7, 'WCR 8' and 'WCR 9'. The plaintiff instituted the present suit against the defendants on 29<sup>th</sup> May, 2009 seeking to recover Land parcel Kakamega Municipality/Block III/220. That simultaneous with the filing of the suit the plaintiff filed an application for injunction which application was allowed and thus preservative orders are in place. The Civil Procedure Rules required that the witness statements and

further list of documents to be relied on had to be filed before the matter can be heard. The plaintiff thereafter has initiated the recording of witness statements relating to the land. The said Kakamega County Council is defunct by reason of the new Constitution. It was therefore difficult to trace and record statements from persons who were in office at the material time. The process of complying also involved engaging various Government officers from relevant departments. Some officers had to seek approvals from their superiors before they could provide statements and the process is taking a while.

This court has considered both the applicants' and the respondent's submissions, supporting affidavits and annexures therein in great detail. It would appear that the dispute revolves around public land which is a critical public utility and as such should be determined on merit in the public interest. It also appears that, the plaintiff has expended a lot of time and resources in the investigations, institution and preparation of the suit for hearing. It is in the interest of substantive justice that the suit herein be prosecuted to its fullest extent. I find the delay is excusable and the respondents should be given time to set the suit down for hearing. I therefore dismiss this application and order that the plaintiff obtains a hearing date in the registry within the next sixty (60) days. Costs of this application to be in the cause.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 19<sup>TH</sup> DAY OF JULY 2017.**

**N. A. MATHEKA**

**JUDGE**