

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 74 OF 2013

ANNA INDONDE IMBOBA :::::::::::PLAINTIFF/APPLICANT

VERSUS

VINCENT SHINGWANA INJEDE :::::::::::DEFENDANT/RESPONDENT

RULING

This application is dated 16th June 2017 and is brought Section 1A, 1B &3A of the Civil Procedure Act, Order 17 Rule 2 and Order 40 Rule 6 of the Civil Procedure Rules and seeks the following orders;

1. THAT the application dated 20th May 2015 be dismissed for want of prosecution.
2. THAT this Honourable Court be pleased to set aside, vary or vacate the order made on the lifting of interim orders for stay of execution of the eviction order.
3. THAT the costs of this application be provided for.

The application is based on the following grounds and on the affidavit of AnneIndondeImboba. That it is more than one year since the application dated 20th May 2015 was filed. The applicant in the said application has failed to move the court since he filed the application to date. The interim orders obtained from the application have stayed more than a year. The plaintiff/applicant is unable to benefit from the court judgment delivered on 17th March 2015 and decree of the said judgment issued on 15th April 2015.

The applicant submitted that she instituted a suit against the defendant/respondent herein in KAKAMEGA HC LAND CASE NO. 74 of 2013. Judgment of the said suit was delivered in her favour on 17th March 2015. Annexed and marked "AII 1" is a copy of the decree. On 18th September 2015 my advocates on record were served with an application filed under certificate of urgency dated 20th May 2015 seeking stay of execution of the decree issued on 15th April 2015. On the same date her said advocates were served with another application filed under certificate of urgency dated 1st September 2015 seeking orders that the application dated 20th May 2015 be heard on priority basis during high court vacation. The application dated 20th May 2015 was heard on 9th September 2015 and the applicant was given an order of temporary stay of execution of the eviction order pending inter parties hearing of the application on 28th September 2015(Annexed and marked "AII 2" is a copy of the order issued on 9th September 2015).

On 20th September 2015 she filed a replying affidavit to the application dated 20th May 2015 and 1st September 2015. The application was listed for hearing on 28th September 2015. On 28th September 2015 the hearing of the application was adjourned to 6th October 2015 and temporary stay orders extended to this date. On 6th October 2015 the case was on the cause list but it did not proceed. On 16th October 2015 the respondent's counsel served a hearing notice listing the application dated 20th May 2015 for hearing on 22nd October 2015. Since then the application herein has never been listed for hearing and has never been determined. The applicant submits that the respondent herein is deliberately occasioning the delay to hinder her from benefiting from the judgment delivered in her favour on 17th March 2015. If the orders sought are granted, she will be able to proceed to execute the decree issued by the court on 15th April 2015.

The respondent submitted that, it is common knowledge that the Environment & Land Court was not sitting in Kakamega for quite sometimes before early this year. That he often used to enquire about its availability for so long until he lost track. That he is desirous to have the matter heard and concluded soonest. That dismissal of the application will be very drastic step in light of the fact that this is a land matter. The respondent prays for an opportunity to urge the application.

This court has considered both the applicant's and the respondent's submissions herein. After perusing the court file I find that indeed it is more than one year since the application dated 20th May 2015 was filed. The applicant instituted a suit against the defendant/respondent herein in KAKAMEGA HC LAND CASE NO. 74 of 2013. Judgment of the said suit was delivered in her favour on 17th March 2015. On 18th September 2015 her advocates on record were served with an application filed under certificate of urgency dated 20th May 2015 seeking stay of execution of the decree issued on 15th April 2015. On the same date her said advocates were served with another application filed under certificate of urgency dated 1st September 2015 seeking orders that the application dated 20th May 2015 be heard on priority basis during high court vacation. The application dated 20th May 2015 was heard on 9th September 2015 and the applicant was given an order of temporary stay of execution of the eviction order pending inter parties hearing of the application on 28th September 2015. On 20th September 2015 the applicant filed a replying affidavit to the application dated 20th May 2015 and 1st September 2015. The application was listed for hearing on 28th September 2015. On 28th September 2015 the hearing of the application was adjourned to 6th October 2015 and temporary stay orders extended to this date. On 6th October 2015 the case did not proceed. On 16th October 2015 the respondent's counsel served a hearing notice listing the application dated 20th May 2015 for hearing on 22nd October 2015. Since then the application herein has never been listed for hearing and has never been determined. The respondent is guilty of laches. The Environment and Land Court has been sitting in Kakamega from February 2017. The respondent has failed to move the court for a long time. The interim orders obtained from the application have stayed more than a year. I find that the plaintiff/applicant is unable to benefit from the court judgment delivered on 17th March 2015 and decree of the said judgment issued on 15th April 2015. Justice delayed is justice denied. I find this application has merit and I grant it in the following terms;

1. THAT the application dated 20th May 2015 be dismissed for want of prosecution.
2. THAT this Honourable Court vacates the order made on the lifting of interim orders for stay of execution of the eviction order.
3. THAT the costs of this application to the applicant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 27TH DAY OF SEPTEMBER 2017.

N.A. MATHEKA

JUDGE