



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 94 OF 2012

REUBEN BETT & 9 OTHERS PLAINTIFFS

VERSUS

JOHN KIPNGETICH KOECH & 6 OTHERS.....DEFENDANTS

RULING

(Notice to show cause why the suit should not be dismissed under Order 17 rule 2 of the Civil Procedure Rules; sufficient cause shown; 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. Only the plaintiffs' advocate attended court on the scheduled date and submitted that an order was made on 9th October 2013 in another matter staying proceedings in this matter pending hearing and determination of that other matter. Since no clear details were given in the statement made from the bar, I ordered the plaintiffs to file an affidavit regarding the status of that other matter. The affidavit was ultimately filed on 28th September 2017, sworn by the first plaintiff.
3. It is deposed in the affidavit that on 4th December 2012, an order was made staying this matter pending hearing and determination of Judicial Review Number 6 of 2012 and that the said matter is yet to be determined. That the court file in the said matter has lately not been traced and an application for reconstruction of the file is pending.
4. I have perused the record herein. I note that on 3rd December 2013, an order was made herein staying this matter pending hearing and determination of Nakuru High Court Miscellaneous Civil Application Number 6 of 2012.
5. The Notice to show cause was issued under Order 17 rule 2 which 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.

6. 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.

7. From the affidavit evidence placed before the court, I am persuaded that Nakuru High Court Miscellaneous Civil Application Number 6 of 2012 is still pending. In view of the order made on 3rd December 2013 staying this matter pending hearing and determination of Nakuru High Court Miscellaneous Civil Application Number 6 of 2012, I am satisfied that the plaintiffs have shown sufficient cause as to why this matter ought not to be dismissed for want of prosecution. In the circumstances, I will not dismiss the matter.

8. Parties are encouraged to actively prosecute Nakuru High Court Miscellaneous Civil Application Number 6 of 2012.

9. Costs in the cause.

Dated, signed and delivered in open court at Nakuru this 5th day of October 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Ms. Kinuthia holding brief for Mr. Kibet for the plaintiffs

No appearance for the defendants

Court Assistant: Gichaba