



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 212 OF 2014

DAVID WANGIKI KAHUTHIA (Suing as the Chairman of

Barina Squatters Self Help Group).....**PLAINTIFF**

VERSUS

SIMON NDUNGU KURIA.....**1ST DEFENDANT**

TOBIAS AOL OSANO.....**2ND DEFENDANT**

GRACE NJERI WACHIRA (Sued in their capacity

as the officials of Barina Squatters Lobby Group).....**3RD DEFENDANT**

RULING

(Application for dismissal of suit for want of prosecution; no action taken by plaintiff since filing suit; no response filed by the plaintiff to oppose the motion; application allowed; suit dismissed for want of prosecution)

1. The application before me is that dated 13 June 2017 filed by the defendants. It is an application brought inter alia pursuant to the provisions of Order 17 Rule 2 (1) and (3) of the Civil Procedure Rules, 2010 and seeks orders that this suit be dismissed with costs for want of prosecution. Before I go to the gist of the application, I find it necessary to give a little background to the suit.

2. The suit was commenced on 23 July 2014 by way of plaint. The plaintiff described himself as the Chairman of Barina Squatters Self Help Group. The defendants are described in the plaint as Chairman, Secretary and Treasurer of Barina Squatters Lobby Group. In the plaint, the plaintiff averred inter alia that in the year 1999, he entered into negotiations with Standard Chartered Bank for the purchase of the land parcels LR No. 11381, 10332 and 57000 which are situated in Kampi Ya Moto in Nakuru County, which properties were to be auctioned by the Bank. He has further averred that the Barina Squatters Self Help Group, a group of workers in the said farms, was formed for purposes of purchasing the said parcels of land, and that in the year 2002, a sale agreement was entered into, whereby his Group, was to purchase the said properties at a sum of Kshs. 85,000,000/=. It is pleaded that the money was raised, and the plaintiff and his Group paid the Bank the money, but on going to collect the title deed in the year 2008, the plaintiff found that the same had already been collected by the defendants without the authority of the plaintiff. It is stated that on collecting the title deed, the defendants descended on the farm, and started subdividing the same and selling large portions to strangers, to the detriment of the real members. In the suit, the plaintiff sought orders to have the defendants surrender the title deeds, or in the alternative, a revocation of the same by the court, and for the plaintiff to be issued with title deeds.

3. The defendants filed defence on 1 October 2014. They pleaded that they are Chairman, Secretary and Treasurer of Barina Squatters Self Help Group. They averred that the said Barina Lobby Group is not even a registered group and was formed to demand the return of the land certificates which had been given out to one Josphat Kariuki who is said to have imposed himself as Chairman. It is stated that after the Certificate was returned, the Lobby Group was broken. It is denied that the plaintiff is Chairman of Barina Squatters Self Help Group, and it is averred that Barina Self Help Group, through its registered Trustees, is the proprietor of the three suit properties. It was also pleaded that there exists several other cases being Cases Nos. 1428 of 2004 and No. 81 of 2009, over the same subject matter.

4. Together with the plaint, the plaintiff filed an application seeking orders to have the defendants restrained by way of an injunction from the suit properties. That application was listed to be heard inter partes on 1 October 2014 but there was no appearance. On 29 October 2014, the law firm of M/s Wambui Ndungu & Company Advocates, who are on record for the plaintiffs, took the date of 3 February 2015, for the hearing of the said application. On the said date, there was no appearance on the part of the said firm but Mrs. C.M. Kirui for the defendants was present and sought to have the application dismissed for failure to prosecute. I proceeded to dismiss the said application for failure to

prosecute. From 3 February 2015, to the time that this application was filed on 16 June 2017, no attempt was made by the plaintiff to fix the matter for hearing.

5. The supporting affidavit to this motion is sworn by Simon Ndungu Kuria, the 1st defendant. He has deposed inter alia that it is over one year since the plaintiff took any step to prosecute the matter. He has averred that the plaintiff is being unjustly subjected to a perpetual state of anxiety by the plaintiff and that the delay in prosecuting the suit is prejudicial to the defendants. He has asked that the suit be dismissed for want of prosecution.

6. Despite being served, the plaintiff has not filed anything to oppose this motion, and neither he, nor his counsel, appeared at the hearing of the motion.

7. Order 17 Rule 2, upon which this application is premised, provides as follows :-

2. Notice to show cause why suit should not be dismissed [Order 17, rule 2.]

(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.

8. It will be seen from the above, that where no action is taken in a suit for more than one year, the suit may be dismissed for want of prosecution. In our case, the last time the matter was in court was on 3 February 2015 when the matter came up for hearing of the plaintiff's application for injunction. Even then, the plaintiff and his counsel were absent. Since that time, the plaintiff has not taken any step to prosecute this case. The time that has lapsed is more than one year to the filing of this application. It is apparent to me that the plaintiff is no longer interested in this case. The lack of interest by the plaintiff is best demonstrated by the fact that he has not even bothered to reply to this motion. He has failed to show cause why this case should not be dismissed for want of prosecution.

9. There is no purpose being served in having this case gather dust in the court registry shelves. I hereby dismiss this case for want of prosecution. The defendants shall have the costs of this suit. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 9th day of November 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr. C.K Langat instructed by M/s Gordon Ogola, Kipkoech & Company Advocates for the defendants/applicants.

No appearance on the part of M/s Wambui Ndungu & Company Advocates for the plaintiff/respondent.

Court Asistant: Carlton Toroitich.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU