



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**MISC ELC CASE NO. 20 OF 2014**

**RAPHAEL GACHOKI NJANGURU... PLAINTIFF**

**VERSUS**

**ARESIO NDANJU KARAGU.....DEFENDANT**

**RULING**

This is in respect to the defendant's Notice of Motion dated 23rd March 2017 in which the following orders are sought:

- 1. That this Court do dismiss this suit for being time-barred and for non-prosecution.***
- 2. Costs be provided for.***

The application is based on the grounds appearing on the face thereof and is also supported by the affidavit of **ARESIO NDANJU KIRAGU** the defendant herein.

The gravamen of the application which is premised under the provisions of **Order 17 Rule 2 (1) Order 2 Rule 15 (D) of the Civil Procedure Rules and Section 27 (1) of the Limitation of Actions Act** is that the plaintiff filed this suit on 4th December 2006 seeking orders arising out of an agreement between him and the defendant entered into way back in 1965 and later filed an application dated 24th March 2014 seeking orders to extend time after realizing that his suit was time-barred. A ruling was delivered on 19th December 2014 dismissing that application but since then, the plaintiff has not taken any steps to prosecute his suit thus necessitating this application.

Though served with the application, the plaintiff did not file any reply or grounds of opposition thereto. Instead, the plaintiff filed a notice dated 12th September 2017 withdrawing the service of his counsel **MS WANGECHI MUNENE** and when he appeared in Court on 5th October 2017 for the hearing, all he said was that he did not agree with the application.

This application is therefore un-opposed. There are two limbs to the application.

- 1. To dismiss this suit for being time-barred.***
- 2. To dismiss this suit for want of prosecution.***

On 19th December 2014, I delivered a ruling in this case in which I dismissed the plaintiff's application seeking an extension of time in which to institute this suit against the defendant. That ruling was of course based on the finding that the suit was time barred as it sought orders based on a land sale agreement entered into between the parties in 1965. No appeal was filed against that ruling. At least

none has been brought to my attention. That ruling therefore brought this suit to an end and I need not revisit the issue about this suit being time barred.

Since the suit is time barred, there is nothing to prosecute and that perhaps explains why the plaintiff has taken no action in the matter since 19th December 2014. **Order 17 Rule 2 (1) of the Civil Procedure Rules** is therefore not applicable because it can only refer to a suit in which no action has been taken towards prosecuting it. In the circumstances of this case, my ruling delivered on 19th December 2014 effectively meant that there is no suit to prosecute since leave to file it out of time was rejected. Perhaps I ought to have made orders dismissing the suit then.

For the avoidance of doubt therefore, this suit is hereby dismissed with costs to the defendant.

**B.N. OLAO**

**JUDGE**

**10<sup>TH</sup> NOVEMBER, 2017**

**Ruling delivered, dated and signed in open Court this 10<sup>th</sup> day of November 2017 at Kerugoya**

Mr. Gichuki for Ms Thungu for Defendant present

Plaintiff present.

**B.N. OLAO**

**JUDGE**

**10<sup>TH</sup> NOVEMBER, 2017**