



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 114 OF 2014

GREGORY SEMBEI WAMBUA.....1ST PLAINTIFF

PETER NGENGE WAMBUA.....2ND PLAINTIFF

VERSUS

GEORGE MUEMA SYENGO.....1ST DEFENDANT

ANJELINE MWENDE NJERU.....2ND DEFENDANT

EQUITY BANK LIMITED.....3RD DEFENDANT

DISTRICT LAND REGISTRAR, KITUI.....4TH DEFENDANT

RULING

1. In the Application dated 1st September, 2016, the 3rd Defendant is seeking for the following orders:

a. That this suit against the 3rd Defendant be dismissed for want of prosecution.

b. That the costs of this Application be provided for.

2. The Application is premised on the grounds that since this suit was filed on 8th October, 2014, no effort has been made to set it down for hearing; that it is in the interest of justice that the orders being sought be granted and that the court has jurisdiction to grant the said orders.

3. In reply, the Plaintiffs' advocate deponed that a few months after the Plaintiffs' suit was filed, the operations of the Environment and Land Court at Machakos were suspended and that although the suit was scheduled for mention on 27th May, 2015, nothing happened on that day.

4. The counsels for both parties appeared before me and made brief oral submissions which I have considered. I have also considered the case of *Mwangi S. Kimanyi vs. The Attorney General & Another (2014) eKLR*.

5. The Plaint in this matter was filed on 8th October, 2014. However, it was not until 19th December, 2014 that the 1st and 2nd Defendants filed their Defence. The 3rd Defendant filed its Defence on 14th January, 2015.

6. This court is aware that all the matters in the Environment and Land Court, Machakos used to be handled by the High Court.

7. However, on 8th May, 2015, the Court of Appeal in *Karisa Chengo & others vs. R (2015) eKLR* held that the High Court had no jurisdiction to hear and determine land matters.

8. Consequently, all the land matters that had been filed could not be fixed for hearing, until January, 2017 when I was posted to this station.

9. Consequently, the Plaintiffs cannot be blamed for not having fixed the matter for hearing as from 8th August, 2015 for lack of a judge in the station.

10. In the circumstances, and considering that the 3rd Defendant filed its Defence on 14th January, 2015, a few months before the *Karisa Chengo (supra)* decision was made, I find that the Application dated 1st September, 2016 is unmeritorious.

11. The Application dated 1st September, 2016 is therefore dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE