



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION
ELC. CASE NO. 3 OF 2008

MARK ODUOR.....PLAINTIFF

VERSUS

JULIUS WANJAU.....DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 25th March 2013 in which the Defendant seeks for this suit to be dismissed for want of prosecution and for costs to be provided for.

The Application is premised on the grounds set out on its face as well as the Supporting Affidavit of the Defendant/Applicant sworn on 25th March 2013 in which he averred that a period of over twelve months had elapsed since this matter was last in court which is an indication that the Plaintiff in no longer interested in prosecuting this suit.

The Application is not contested despite the Plaintiff being duly served. The Defendant/Applicant filed his submissions.

The applicable law is **Order 17 Rule 2(1) of the Civil Procedure Rules, 2010** which provides as follows:

“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.”

Order 17 Rule 2(3) provides as follows:

“Any party to the suit may apply for its dismissal as provided in sub-rule 1”

I have carefully studied the proceedings of this suit. I have noticed that this suit was filed on 10th January 2008 wherein the Plaintiff sought, inter alia, for a declaration that he is the lawful owner of the parcel of land known as Plot No. 56 being part of LR. No. 14235 Kasarani, Nairobi (hereinafter referred to as the “suit property”). At the same time, the Plaintiff filed his Chamber Summons seeking, inter alia, for orders that the Defendant be restrained by way of a temporary injunction from putting up any building, house, fence or any other structure whatsoever on the suit property. This order was granted ex parte by Lady

Justice Lesiit on 10th January 2008. That order remains in force from that date up to date yet the Chamber Summons has never been set down for hearing. The Defendant has since filed a Statement of Defence and Counterclaim to which the Plaintiff filed his Reply and Defence to Counterclaim on 31st July 2008. Since then up to date, a period of over 7 years the Plaintiff has not prosecuted either his pending application or even the main suit.

A period in excess of 7 years having lapsed without the Plaintiff taking any action in this suit more than confirms to me that the Plaintiff has abandoned this suit and I find no difficulty in allowing this Application, which I hereby do, with costs to the Defendant/Applicant. The Defendant is now at liberty to set down his Counterclaim for hearing.

It is so ordered.

DELIVERED AND SIGNED AT NAIROBI THIS 29TH DAY OF JANUARY 2016.

MARY M. GITUMBI

JUDGE