

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC CASE NO. 410 OF 2008

SUKHDEV SINGH LALY.....PLAINTIFF

VERSUS

JANET LEELAND.....1ST DEFENDANT

ADAM FRANK THOROGOOD.....2ND DEFENDANT

RULING

A pre-trial conference in this suit was held on 25/5/2015. The parties were directed to comply with Order 3, 7 and 11 of the Civil Procedure Rules within sixty days. Hearing of the suit was fixed to take place on 21/1/2016, today.

On the hearing date, advocate Kimani for the Plaintiff told the court that he had lost contact with his client. He conceded that today's hearing had been fixed in court. He, however, sought an adjournment as he had no witnesses.

Mr. Omari, holding brief for Mr. Ngaiywa for the Defendants, told the court that he had also been unable to make contact with his clients. As a result he said that he had no witnesses. For this reasons he sought an adjournment.

I do note that today's hearing date was fixed on 26/5/2015, almost eight months ago. The parties, therefore, had adequate time to prepare themselves for the hearing of this suit.

It is my view that the parties are not eager to have this suit heard without further delay. It is noted that the public has a perception that courts of law are responsible for delays in the hearing and determination of the suits. This case constitutes a veritable demonstration that in many cases courts are not to blame for a case such as this one; the parties are to be blamed for resultant delays. Courts have been lampooned and demonized as veritably natural authors of circumstances which lead to the delay in hearing and determining cases. Some cases such as this one do debunk such perceptions.

In this case, the court clerk, just to confirm what the parties advocates had told the court, called out, outside court, the names of the parties. The parties were nowhere near the court. They were absent.

I wish to be guided by the provisions of Order 12 Rule 1 which states: - ***“If on the day fixed for hearing outside the court neither party attends, the court may dismiss the suit.”*** This is a discretionary power granted to the court to handle situations such as this one where the parties are not interested in having their suits heard in an expeditious manner. This power, must however, be exercised in a proportionate and judicious manner. In the present circumstances, the parties have not demonstrated to the satisfaction of their court that this suit should not be dismissed. Yes, the advocates representing the parties were in court, but they are not parties as envisaged by code 12 Rule 1. I, therefore dismiss this suit. I make no award in respect of costs.

It is so ordered.

Delivered in open court at Nairobi this **26th** day of **January, 2016** in the presence of: -

Court clerk – Daniel

Kimani for Plaintiff

Kibanya holding brief Ngaiywa for Defendant

P.M. NJOROGI

JUDGE