



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO.133 OF 2012**

**KWANZA ESTATES LTD.....PLAINTIFF**

**=VERSUS=**

**KENYA WILDLIFE SERVICES.....DEFENDANT**

**R U L I N G**

1. In her Application dated 12<sup>th</sup> July, 2016, the Defendant is seeking for the dismissal of this suit for want of prosecution.
2. The Application is premised on the grounds that on 8<sup>th</sup> March, 2013, this court allowed the Plaintiff's Application dated 14<sup>th</sup> August, 2012; that as a result the Plaintiff is enjoying interim orders of injunction and that the Plaintiff is not interested in pursuing this matter.
3. Although the Defendant's advocate was served with the Application, he neither filed Grounds of Opposition nor a Replying Affidavit. However, the Plaintiff was represented by his advocate when the Application proceeded for hearing on 6<sup>th</sup> October, 2016.
4. The Defendant's counsel submitted that the Plaintiff has never set down the matter for hearing since 8<sup>th</sup> March, 2013; that it is the duty of the Plaintiff to prosecute his case expeditiously and that the existence of the suit is prejudicial to the Defendant.
5. The Defendant's counsel submitted that the Defendant ought to have taken steps in fixing the matter for hearing; that no pre-trial directions have been taken in this matter and that the Defendant cannot jump a procedure provided for in the Civil Procedure Rules and move the court for the dismissal of the suit.
6. The Plaintiff has not denied that he has never set down the matter for pre-trial directions or hearing since 8<sup>th</sup> March, 2013 when the court delivered its Ruling in respect to an Application for injunctive orders.
7. By the time the Defendant filed this Application, three years had lapsed since the matter was last in court.
8. As was held in the case of **Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Ltd (1969) EA 699**, it is always the duty of the Plaintiff to bring his suit to an early trial, and he cannot absolve himself of this primary duty by saying that the Defendant consented to the position.
9. Order 17 Rule 2 of the Civil Procedure Rules provides that in any suit in which no application has been made or step taken by either party for one year, the court may on its own motion, upon giving notice to the parties, dismiss the suit. Any party to the suit may also apply for its dismissal. That is what the Applicant has done.
10. In view of the fact that the Plaintiff has never taken any step to prosecute this suit since 8<sup>th</sup> March, 2013 and considering that the Plaintiff or his advocate has not filed any Replying Affidavit to explain the

delay in prosecuting this suit, I allow the Defendant's Application dated 12<sup>th</sup> July 2016 as prayed.

Dated, signed and delivered in Malindi this **4<sup>th</sup>** day of **November**, 2016.

**O. A. Angote**

**Judge**