



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**

**AT KITALE**

**CIVIL CASE NO. 63 OF 2011**

**JOSEPH K. MARINDICH & 4 OTHERS.....PLAINTIFFS**

**VERSUS**

**REUBEN YATOR & 13 OTHERS.....DEFENDANTS**

**RULING**

**BACKGROUND.**

1. The applicants and the respondents are all members of a farm carved out of a larger farm L.R. No. 6199/1 commonly referred to as Ex-Cullen Farm situated near Moi's Bridge. The applicants, respondents and other people were given 1140 acres out of the Ex-Cullen Farm vide judgment in Kakamega HCCC No. 230 of 1989. It became necessary that before the 1140 acres could be given to individual members, it had to be registered in the names of 5 trustees who were duly elected by the farm members. This is how the five respondents were elected as trustees. The five then pursued the registration of the 1,140 acres which was finally registered in their names. In the process, the trustees incurred money. It was agreed that the money spent by the trustees (respondents) was to be refunded by the 323 members on prorata basis.

2. All other members except the thirteen applicants agreed to reimburse the expenses incurred by the five respondents. The respondents were forced to file a suit against the thirteen applicants seeking refund of the expenses incurred according to the acreage held by each of them. The suit was filed on 22/7/2011. The respondents contemporaneously filed an application seeking to restrain the Land Registrar Eldoret from processing titles in favour of the applicants until each of them cleared the amount due to the respondents. The respondents were granted interim orders on 29/7/2011 to last until the application was heard. For one reason or another, the said application was not heard. On 23/10/2012 the High Court transferred the file to the Environment and Land Court for hearing and disposal. The respondents did not take any step to prosecute their application dated 22/7/2011. this prompted the defendants/applicants to file an application dated 17/9/2014 in which they seek the dismissal of the entire suit for want of prosecution.

**APPLICANTS' APPLICATION.**

3. The applicants contend that it has been a period of over two (2) years since this case was in court and that the respondents have not taken any step to prosecute the same and therefore the same should be dismissed as the respondents have lost interest in the same. The applicants contend that the respondents are not in a hurry to prosecute their case as they are enjoying interim orders granted to them. They contend that the respondents' action is frustrating them as they cannot process and obtain their individual

titles.

4. The application is opposed by the respondents through a replying affidavit sworn by Daniel Kipkoech Kabur on 25/10/2014. The respondents contend that the delay in prosecution of the case is because the applicants requested for time to pay up whatever was owed to the respondents. The respondent contend that pursuant to the said request some applicants have since paid what they owe the respondents. Some have had titles processed in their names and others are in the process of getting their titles.

5. Order 17 Rule 2 (1) of the Civil Procedure Rules provides as follows:-

**2 (1) “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:-

**2 (3) “Any party to the suit may apply for its dismissal as provided in sub-rule 1”.**

6. It is clear from the provisions cited hereinabove that a suit can only be dismissed if there is no sufficient cause shown why the same should not be dismissed. In the instant case, the respondents have demonstrated that some applicants have since paid what is owed to the respondents. Two of them have infact had their titles processed. Copies of titles for the first and sixth applicants were annexed to the replying affidavits. Payment has also been received from the fourteenth and third applicants as per copies of receipts annexed to the replying affidavit. All these payments were made subsequent to the filing of this suit. I therefore agree with the respondents that the delay in prosecuting this case was due to the request by the applicants for more time to enable them pay up. The second applicant has already paid what was due to him. It does not matter whether the amount was paid on his behalf by a third party who was interested in getting title having bought part of the second applicant's land.

The receipt was issued in the name of the second applicant. I therefore find that the application to have this suit dismissed cannot be allowed in the circumstances. The same is hereby dismissed with costs to the respondents. I direct that the respondents should take a date for their application dated 22/7/2011 within fourteen days from today. If this order is not complied with, the application as well as the main suit shall stand dismissed.

It is so ordered.

**[Dated, signed and delivered at Kitale on this 22nd day of January, 2015.]**

**E. OBAGA**

**JUDGE**

In the presence of Mr. Kiarie for plaintiffs and Mr. Waweru for defendants.

Court Clerk – Kassachoon.

**E. OBAGA**

**JUDGE**

**22/1/2015**