



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT KERICHO**

**E. L. CASE NO. 71 OF 2009**

BARNABAH MARITIM-----PLAINTIFF

VERSUS

MANYWELE KORGOREN & ANOTHER-----DEFENDANTS

**RULING**

***(Application for dismissal of suit for want of prosecution; plaintiff not having moved court for 5 years; application allowed; suit dismissed for want of prosecution)***

The application before me is that dated 23 May 2014 filed by the defendants. It is an application brought under the provisions of **Order 17 Rules 1 and 3 of the Civil Procedure Rules**, and it seeks to have the plaintiff's suit dismissed for want of prosecution. The application is supported by the affidavit of the 2nd defendant. Despite being served the plaintiff did not file any response to the application and neither did he, nor his counsel, appear at the hearing of the application despite being served. The application is therefore unopposed.

**Order 17 Rule 3 of the Civil Procedure Rules, 2010**, allows a party to apply for the dismissal of a suit where no application has been made or step taken for one year. I have perused the record herein. The plaintiff filed this suit on 19 August 2009 through the law firm of M/s J.K Koech & Company Advocates. The plaintiff's claim, as I understand it, is that he purchased a plot of 50 X 100 feet from a certain land which was later sub-divided. In the plaint, the plaintiff asked for a cancellation of the title, which I think, is where the small portion which he alleges to have purchased falls. Appearance and Defence was filed on 4 September 2009 by the firm of M/s Bett & Company Advocates. On 16 September 2009, the plaintiff filed an application for injunction which was resisted by the defendants who filed a replying affidavit. That application was withdrawn on 22 September 2009 when it came up for inter-partes hearing.

On 25 November 2009, the plaintiff filed an application dated 24 September 2009 seeking to amend the plaint. That application came up for inter-partes hearing on 27 January 2010, when counsel for the plaintiff, asked that the matter be stood over generally. Nothing transpired in the matter until 18 February 2011 when counsel for the defendant was given 11 May 2011 for mention, but I have no record that the matter went to court on that day. That is the last record until this application was filed on 25 March 2015.

It will be seen that close to 4 years have lapsed since the matter was last in court and at least 5 years since the plaintiff moved the court for any orders. This is evidence enough that the plaintiff has lost interest in the suit. It is no wonder that the plaintiff has not even deemed fit to contest this application. I have every reason to allow this application and I hereby allow it. The plaintiff's suit is hereby dismissed with costs.

It is so ordered.

**DATED, DELIVERED & SIGNED AT KERICHO THIS 26TH DAY OF JUNE 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**In the presence of:**

Mr.Caleb Koech instructed by M/s Bett and Company Advocates for the defendant/applicant.

No Appearance on part of M.S J. K. Koech and Company Advocates for the plaintiff/respondent.

Court Assistant - F. Juma

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT.**