



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. NO. 315 OF 2007

STEPHEN KINYANJUI MUORIA.....1ST PLAINTIFF

SAMUEL CHEGE KARANJA.....2ND PLAINTIFF

HAMPREY MUCHOAGIA.....3RD PLAINTIFF

LEAH WANGARI MIAKO.....4TH PLAINTIFF

VERSUS

NEW ROYSAMBU HOUSING COMPANY LTD.....1ST DEFENDANT

ELIZABETH WARUGURU KANG'ETHE.....2ND DEFENDANT

THE DISTRICT LAND REGISTRAR

KAJIADO DISTRICT.....3RD DEFENDANT

THE COMMISSIONER OF LANDS.....4TH DEFENDANT

RULING

Coming before me for determination is the Notice of Motion dated 7th June 2013 in which the 1st and 2nd Defendants/Applicants are seeking for the following orders:

1. That the Plaintiff's suit be dismissed for want of prosecution.
2. That the temporary injunction granted on 2nd April 2007 and issued on the 11th April 2007 restraining the 1st and 2nd Defendants by themselves, their agents, servants from selling or alienating, wasting or subdividing or interfering and disrupting the Plaintiff's quiet possession of the suit premises be hereby vacated and/or set aside.
3. That the Plaintiffs do bear the costs of the application as well as those of the suit.

The Application is based on the Supporting Affidavit of Robert Ndemo Mokaya, and advocate of the High Court of Kenya representing the 1st and 2nd Defendants in this matter, sworn on 7th June 2013. He averred that this suit was filed in 2007. He also averred that the Plaintiffs obtained restraining orders

against the 1st and 2nd Defendants by themselves, their agents, servants from selling or alienating, wasting or subdividing or interfering and disrupting the Plaintiffs' quiet possession. He further averred that he Plaintiffs filed the said order with the Registrar of Lands at Kajiado prohibiting the 1st and 2nd Defendants from dealing with the suit property. He further averred that upon obtaining those orders, the Plaintiffs were further ordered to take a hearing date at the registry on a priority basis which the Plaintiffs failed to do. He averred that the Plaintiffs have since then never taken any steps to prosecute the matter with the result that the suit has caused the 1st and 2nd Defendants unnecessary anxiety and expense. He further stated that it is in the interest of justice that since the Plaintiffs are not interested to prosecute this matter, it be ordered dismissed for want of prosecution and the orders of 2nd April 2007 be vacated.

The Application is contested. The 1st Plaintiff, Stephen Kinyanjui Mworio filed his Replying Affidavit sworn on 28th June 2013 in which he stated that the Defendants/Applicants are the ones who derailed the conclusion of this suit as they have consistently made applications which has hindered determination of this suit. He also stated that his advocate employed the services of a court process server to serve the mention notice on the Defendants' advocates on 12th June 2013. He further stated that he attended court on 19th June 2013 and on 9th July 2013. He further stated that the delay on fixing a hearing date was not occasioned by the Plaintiffs but by the Defendants for their non-compliance with Order 7 and Order 11 of the Civil Procedure Rules.

The 1st and 2nd Defendants filed their written submissions dated 2nd October 2013 which have been read and taken into account in this ruling.

The applicable law is Order 17 Rule 2(1) 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 has been an active matter in which applications have been filed and ruled upon by the various judges who have handled the matter since the suit was filed in the year 2007. I noted that there were instances where the Plaintiffs were taking the necessary steps to prosecute this matter and there were also instances when the Defendants took the lead. With this background, I would not say that the Plaintiffs have in any way failed to pursue their case to conclusion. It is noteworthy that one of the applications that has been prosecuted and ruled upon was a contempt application against the Defendants. Further, it is particularly noteworthy that the 1st and 2nd Defendants sought leave to file their Statement of Defence on 19th June 2013 and only filed the same on 1st July 2013, about 6 years after the suit was filed by the Plaintiffs. No good reason was given by the Defendants as to why there was this delay. It would therefore appear to me that the Defendants are also to blame for this suit not being concluded sooner. On that basis alone, I find this Application as not merited and decline to allow the same.

Accordingly, this Application is hereby dismissed with costs to the Plaintiffs. I however direct the Plaintiffs to now fix this suit for hearing on a priority basis.

SIGNED AND DELIVERED AT NAIROBI THIS 28th ____

DAY OF February _____ 2014

MARY M. GITUMBI

JUDGE