

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 67 'A' OF 2013

KUCHANJA MWAMBUE KALAMA.....PLAINTIFF

=VERSUS=

JOSEPH OMOTI TENYWA.....DEFENDANT

R U L I N G

Introduction

1. What is before me is the Defendant's Application dated 31st October 2012 seeking for the dismissal of the suit for want of prosecution.
2. The Application is premised on the ground that the Plaintiff has neglected and or otherwise failed to set down the suit for hearing for over twenty months.
3. The Application is supported by the Defendant's affidavit.
4. The Plaintiff did not file any response in opposition to the said Application although his counsel appeared before me on 12th February 2014 when the Application came up for hearing.
5. The Defendant's counsel reiterated in his submissions that a delay of over twenty months to prosecute the suit is inordinate and that the suit should be dismissed pursuant to the provisions of Order 17 Rule 2 of the Civil Procedure Rules.
6. In his response, the Plaintiff's counsel submitted that the parties have not complied with the provisions of Order 11 of the Civil Procedure Rules and that Article 159 of the Constitution provides that substantive justice should be administered without undue regard to technicalities.
7. This suit was filed in the year 2009, by which time the Civil Procedure Rules had not been promulgated. Although it can be argued, and correctly so, that the 2010 Civil Procedure Rules are applicable to this suit, the Plaintiff has not offered an explanation as to why he has not complied with the said Rules since the year 2010.
8. I do not agree with the proposition that a suit cannot be dismissed for want of prosecution just because the parties have not complied with the provisions of the Civil Procedure Rules or any other law. Once a party files a suit in court, it is incumbent upon him to put in motions mechanisms to comply with the law within a reasonable period and prosecute the case expeditiously, and without undue delay (**See Article 159 (2) (b) and Section 1A of the Civil Procedure Act**).
9. In the absence of an explanation as to why this suit has not been prosecuted since 24th May 2010 when it was last in court, I shall, which I hereby do, allow the Defendant's Application dated 31st October 2012 as prayed.

Dated and delivered in Malindi this 19th Day of **March 2014**

O. A. Angote

Judge