

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 503 OF 2012

Formerly HCC No. 49 of 2009

CHEROP CHEPSERGON.....PLAINTIFF

VS

RICHARD CHEBON CHEPSERGON.....DEFENDANT

(Application for dismissal for want of prosecution; suit filed in the year 2009; no action taken in the suit since it was filed; no response to application for dismissal; application allowed; suit dismissed for want of prosecution with costs)

RULING

The application before me is a Motion filed by the defendant pursuant to the provisions of Order 17 Rule 2 of the Civil Procedure Rules, 2010. It seeks to have this suit dismissed for want of prosecution. The application is based on grounds inter alia that the suit has been pending for more than one year and the plaintiff has not taken any step to prosecute it. The application is supported by the affidavit of the defendant.

Order 17 Rule 2 provides as follows :-

Notice to show cause why suit should not be dismissed [Order 17, rule 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.

(2 If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.

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

(4 The court may dismiss the suit for non-compliance with any direction given under this Order.

I have perused the record herein. It shows that this suit was filed on 7 April 2009 by way of plaint through the law firm of M/s Kiplagat J. Misoi & Company Advocates. The plaintiff's case is that he is the beneficiary of a land parcel Baringo/Kapropita/283. The defendant filed Defence on 23 April 2009 in which the plaintiff's claims were denied. The defendant averred that he is the registered proprietor of the suit land and was issued with title documents in the year 1985. No action was ever taken by the plaintiff to do anything after the defence was filed.

It will be seen from a reading of Order 17 Rule 2, that if no step is taken for one year, any party may

apply to have the suit dismissed for want of prosecution. Despite being served with the subject application, the defendant has filed no response to the same. He has clearly lost interest in this suit.

I have no reason not to allow this application. I allow it. The plaintiff's suit is hereby dismissed for want of prosecution under Order 17 Rule 2(3) of the Civil Procedure Rules. The plaintiff will also shoulder the costs of this application and of this suit.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF JULY 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of:

M/s Mirugi Kariuki & Co for defendant/applicant – Absent.

M/s Kiplagat J. Misoi for plaintiff/respondent – Absent.