



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 158 OF 2010

MARIA CRISTINA MENON.....PLAINTIFF/RESPONDENT

=VERSUS=

GIORGIO BERTI.....1ST DEFENDANT/APPLICANT

RESIDORI MILVIA.....2ND DEFENDANT/APPLICANT

R U L I N G

Introduction:

1. What is before me for determination is the Defendants' Application dated 28th May 2014 seeking to have the Plaintiff's suit dismissed for want of prosecution.
2. The Application is premised on the grounds that the Plaintiff has not taken any steps to prosecute the suit since the suit was filed; that the delay in prosecuting the suit is inexcusable and that the Plaintiff is not interested in pursuing the suit.
3. In response, the Plaintiff's advocate has deponed that the delay in prosecuting the matter lies with his firm; that there was an attempt by the parties to reconcile and that he had no intentions of delaying the matter.
4. The Defendants'/Applicants' advocate submitted that the delay in prosecuting this matter has been prolonged and inexcusable and that the Defendants are not aware of any negotiations as alleged by the Plaintiff's counsel.
5. The Plaintiff's/Respondent's counsel submitted that compliance with pre-trial directions does not impose a duty, exclusively, to the Plaintiff in regard to the filing of a pre-trial questionnaire.
6. The Plaintiff's counsel submitted that a suit cannot be said to be ready before compliance with pre-trial procedure; that each party is required to complete, file and serve upon the other party a pre-trial questionnaire and that the Defendants have never filed a pre-trial questionnaire.
7. Counsel submitted that the Defendants have opted to lie about the existence of negotiations which negotiations were confidential.
8. This matter was filed on 15th December 2010. In the Plaintiff, the Plaintiff sought for a declaration that she is entitled to the proprietorship of the undivided share comprised in parcel of land Chembe Kibabamshe/743, amongst other prayers.
9. The Defendants filed their joint Defence on 9th May, 2011 together with a bundle of documents and a list of witness statements.
10. The Plaintiff filed her list of documents and her statement on 29th March 2012.
11. The record shows that the matter has never been slated for pre-trial directions or hearing since it was filed in the year 2010.

12. Order 11 Rule 2 of the Civil Procedure Rules provides that after the close of pleadings, parties shall within ten days complete, file and serve the pretrial questionnaire.
13. A suit always belongs to the Plaintiff, unless the Defendant files a counter-claim. It is the sole responsibility of the Plaintiff to put his suit in motion for hearing whether or not the Defendant has filed his Defence or a pretrial questionnaire. The failure by the Defendant to file a pretrial questionnaire cannot be a reason for the Plaintiff not to prosecute his suit expeditiously.
14. Although the Plaintiff's counsel has deponed that the parties were engrossed in negotiations thus the delay, no evidence was placed before this court of such negotiations. Considering that the parties in this matter are represented by counsels, one would have expected that the said negotiations would be conducted through the advocates, with letters being exchanged, albeit on a without prejudice basis.
15. In the circumstances, I am satisfied that the delay of four (4) years to set this matter down for pre-trial directions and hearing, without any good reason, is prolonged and inexcusable.
16. For those reasons, I allow the Defendants' Application dated 28th May, 2014 as prayed.

Dated and delivered in Malindi this 7th day of **November**, 2014.

O. A. Angote

Judge