



County Government of Tana River v Dabale & 5 others (Environment & Land Case 172 of 2018) [2024] KEELC 4398 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4398 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 172 OF 2018**

FM NJOROGE, J

MAY 30, 2024

BETWEEN

COUNTY GOVERNMENT OF TANA RIVER PLAINTIFF

AND

ALI BUBU DABALE 1ST DEFENDANT

AHMED BUBU DABALE 2ND DEFENDANT

MAHAD NDAMEA BUBU 3RD DEFENDANT

AHMED MOHAMED HASSAN 4TH DEFENDANT

ADAN BULLE HASSAN 5TH DEFENDANT

ABDIAZIZ MOHAMED SHIRE 6TH DEFENDANT

RULING

1. For determination is the Notice of Motion dated 6th November 2023 seeking the following orders:
 - a. The honourable court be pleased to dismiss the plaintiff's suit with costs for want of prosecution.
 - b. That the costs of this application be provided for.
2. The application is premised on the grounds set out on its face and the supporting affidavit of Barke Bujra, advocate in conduct of the matter who deponed that the Plaintiff filed this matter on 30th August 2018 and since then they have never taken any action to prosecute the matter further. That the plaintiff had concurrently filed an application which was heard and determined as per the ruling dated 30th January 2020 whose fruits they have been enjoying at the defendants' expense. He stated that the Plaintiff has lost interest in the suit as they have never set the matter down for hearing thus the suit should be dismissed.



3. In response, the Plaintiff filed a replying affidavit sworn by Patience Lugo, Advocate, stating that on 23rd May 2023, they wrote to the defendants inviting them to fix the matter for pretrial directions. The matter was then fixed for pretrial on 10th July 2023 which date was served upon the defendants. She stated that on 10th July 2023 all parties were present before the Deputy Registrar and the defendants requested for 30 days to comply and the matter was adjourned to 11th September 2023; that unfortunately the matter did not proceed on that date as the Deputy Registrar was proceeding on transfer. Further, on 13th December 2023, they received an email from court informing them that the matter had been scheduled for hearing of an application on 12th February 2024; that from the above history, the application does not meet the threshold set out under Order 17 Rule 2 of the [Civil Procedure Rules](#).

DISPOSITION.

4. The court directed that the application be disposed of by way of written submissions. At the time of writing this ruling, none of the parties had complied with the court's directions of filing written submissions. As such, the application is dismissed for non-compliance with this court's orders.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF MAY 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

