

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 529 OF 2010

CECILIA WANJIKU NJOROGEPLAINTIFF

VERSUS

NATIONAL ENVIRONMENTAL MANAGEMENT

AUTHORITY (NEMA) 1ST DEFENDANT

PETER GATHECA NGANGA.....2ND DEFENDANT

RULING

Coming before me for determination is the Notice of Motion dated 11th July 2012 brought under Order 17 Rule 2(1) of the Civil Procedure Rules which seeks for the Plaintiff's suit to be dismissed for want of prosecution with costs.

The Application is premised upon the grounds appearing on the face of it as well as the Supporting Affidavit of Peter Gatheca Ng'ang'a, the 2nd Defendant herein, sworn on 11th July 2012 wherein he swore that since 22nd June 2011 when the court delivered its ruling in this matter, no step has been taken or application made for over a period of 1 year. He further swore that the Plaintiff's continued enjoyment of interim orders without taking any step towards an expedited resolution of the suit is a gross abuse of the court process. He further stated that it is unfair and unjust for the Plaintiff to endlessly subject the Defendants to anxiety of defending a suit that is not being prosecuted and that in the circumstances it is only fair and just that the suit herein be dismissed with costs.

The Application is not contested. Despite being duly served, the Plaintiff/Respondent did not file any response.

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”

It is clearly in exercise of the power conferred by Order 17 Rule 2(3) that the 2nd Defendant has brought this application to have this suit dismissed for want of prosecution. This is a relatively straightforward case. It is evident that the Plaintiff appears to have lost interest in this matter and has not made any application or set the suit down for hearing since the ruling on her application was delivered on 22nd June 2011, which is now over 2 years ago. It is also clear that she has even ceased to give instructions to her

lawyers who have applied to cease acting for her. Clearly, the time period required in the law cited above has been achieved, thereby giving this court the right to make this ruling. I find that the Plaintiff has lost interest in this suit and it is highly unfair on the Defendants to let this suit continue to tax them. Accordingly, I hereby allow this application and hereby dismiss this suit with costs to the Defendants.

SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF

SEPTEMBER 2013

MARY M. GITUMBI

JUDGE