



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ragita & another v Kuria West Land Disputes Tribunal (Kehancha Division) & 3 others (Petition 4 of 2011) [2023] KEHC 3446 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3446 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KISII**  
**PETITION 4 OF 2011**  
**PN GICHOHI, J**  
**MARCH 29, 2023**

**IN THE MATTER OF ARTICLES 20, 22, 23 (3) & 40 OF THE**  
**CONSTITUTION 2010**

**AND**

**IN THE MATTER OF VIOLATION AND/OR INFRINGEMENT ON THE**  
**PROPERTY RIGHTS OF THE PETITIONER**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT, CAP 300-LAWS OF**  
**KENYA**

**AND**

**IN THE MATTER OF LAND REGISTRATION NUMBER NORTH**  
**SAKWA/KAMRESI/15**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY**  
**JURISDICTION & PROTECTION OF FUNDAMENTAL RIGHTS &**  
**FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND**  
**PROCEDURE RULES, 2006**

**AND**

**IN THE MATTER OF SECTION 19 (SIXTH SCHEDULE) OF THE**  
**CONSTITUTION, 2010.**

**BETWEEN**

**MWITA RAGITA ..... 1<sup>ST</sup> PETITIONER**



**MUSA RAGITA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**KURIA WEST LAND DISPUTES TRIBUNAL (KEHANCHA  
DIVISION) ..... 1<sup>ST</sup> RESPONDENT**

**RESIDENT MAGISTRATE’S COURT AT KEHANCHA ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**SAMSON MARIGO MAKUBO ..... 4<sup>TH</sup> RESPONDENT**

### **RULING**

1. The 4<sup>th</sup> Respondent has moved this court by way of a Notice of Motion dated October 25, 2022 seeking orders that the petitioners Petition dated February 16, 2011 and filed on February 17, 2011 be dismissed with costs for want of prosecution. The grounds are that the Petitioners had also filed an application for Judicial review that is Misc Application No 52 of 2010 Republic Versus Kuria West Land Disputes Tribunal (Kehancha Division) The Resident Magistrate’s Court at Kehancha, The Attorney General Samson Marigo Makubo exparte Mwita Ragita, Anna Robi & Musa Ragita alias Emmanuel Mogosi Ragita.
2. However, this application for judicial review as struck out with costs to Samson Marigo Makubo who was an Interested party and also the 4<sup>th</sup> Respondent in this petition.
3. That the 4<sup>th</sup> Respondent/Applicant herein, proceeded to file a bill of costs dated February 25, 2015 against the Petitioners herein but the same was struck out since this petition was still pending before court. The applicant therefore states that this petition was last in court in year 2016 and no action has been taken by the petitioners towards hearing of this petition.
4. This application is supported by the affidavit sworn by Samson Marigo Makubo on October 25, 2022. The deponent basically reiterates the grounds on the face of the application and hence need not be reproduced here.
5. Parties argued the application orally before court on March 8, 2023 and very briefly. Mr Magara for the 4<sup>th</sup> Respondent/Applicant simply submitted that the petition dated February 16, 2011 should be dismissed with costs and interest to the 4<sup>th</sup> Respondent as the Petitioner is not willing to prosecute the same.
6. In response, Mr Mulisa for the Petitioner/Respondent opposed the application on the grounds that: -
  1. The petition concerns land in Kehancha in Migori County and therefore, in view of Article 162 and 165 of the *constitution*, this court lacks jurisdiction to handle this petition and therefore, the court should transfer it to Environment and Land Court in Migori.
  2. That in regard to issue of delay in prosecuting this petition, the firm of Advocates representing the petitioner lost in touch with the petitioner herein.
7. Mr Magara in a rejoinder insisted that this petition should be dismissed as prayed as the petitioner has lost interest in the same.



8. On jurisdiction, Mr Magara submitted that the issue is an afterthought as it has never been brought to the attention of this court.

### **Determination**

9. I have considered the application and the affidavit in support. I note that the petitioner did not file any affidavit or grounds of opposition in response for the Application herein. I have also considered the oral submission, by both counsel for the parties herein.
10. There is no dispute that this matter has been pending before this court since 2016 when the Bill of costs filed by the 4<sup>th</sup> Respondent was struck out. It is not lost to this court that this is a petition that was filed in 2011 and no doubt the same touched on issues regarding land. The same was filed after promulgation of the [Constitution of Kenya 2010](#). The issues for determination are: -
1. Whether the petition should be dismissed with costs for want of prosecution
  2. Whether the petition should be transferred to Environment and Land Court.
11. As earlier stated, there is no dispute that the petition has been lying before court for a period of more than one year and to be specific for a period of over six (6) years. From the bar, counsel for the Petitioner states that the Petitioner lost in touch with him.
12. If that is the case, they never moved the court in any way towards prosecution of the petition and they are still on record. Failure by the petitioner to get in touch with his advocates or even attend court is a sign of lack of interest in the matter. There is no cause shown for that delay and under order 17 Rule 2 (3) of the [Civil Procedure Rules](#), the petition is ripe for dismissal.
13. On the issue as to whether the petition should be transferred to Environment and Land Court, that is an issue that ought to have been raised by counsel for the Petitioner several years ago as the Environment and Land Court has been in existence for all these years.
14. The question then is, what purpose would such a transfer serve in the circumstances. The only purpose it would serve is to contribute to backlog of cases in courts. Under S 1A and 1B of the [Civil Procedure Act](#), parties and their Advocates are obliged to take steps toward facilitating expeditious disposal of their cases but the petitioner, and his Advocate have clearly failed to do so.
15. Having failed to get in touch with his advocates as stated herein, the Petitioner lacks interest in the case and no useful purpose will be served in transferring this matter to Environment and Land Court at this juncture. The transfer will not change the unexplained and inordinate delay in prosecution of this petition.
16. In the circumstances this court declines to transfer the petition to the said court as sought by Mr Mulisa in his oral submissions. This petition is therefore dismissed for want of prosecution. Costs to the 4<sup>th</sup> Respondent.

**RULING READ, DELIVERED AND DATED THIS 29<sup>TH</sup> MARCH 2023.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Mr. Mulisa for the Petitioner

Mr Magara for 4<sup>th</sup> Respondent



Isindu, Court Assistant

