



**Mungai v Mugambi & 2 others (Environment & Land Case
614 of 2017) [2023] KEELC 16962 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16962 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 614 OF 2017**

LN MBUGUA, J

APRIL 20, 2023

BETWEEN

JOSEPH KINUTHIA MUNGAI PLAINTIFF

AND

HELLEN MUGAMBI 1ST DEFENDANT

EPHANUEL MUGAMBI MUCHIRI 2ND DEFENDANT

EMBAKASI RANCHING CO. LTD 3RD DEFENDANT

RULING

1. This suit was dismissed on June 16, 2021. The application before me dated December 2, 2022 is brought by the plaintiff for the reinstatement of the said suit. The applicant contends that there was a communication break down between him and his advocate because of the corona pandemic. He avers that he is keen to prosecute this suit.
2. The 1st defendant has opposed the application vide her replying affidavit dated February 17, 2023 contending that the applicant has not been diligent in the prosecution of this case, thus there has been inordinate delay in the matter.
3. I have considered the arguments advanced herein. The issue for determination is whether this suit should be reinstated. In the case of *Mwangi S. Kimenyi v Attorney General and Another* [2014] eKLR the court stated that;

“The decision whether a suit should be re-instated for trial is a matter of justice and it depends on the facts of the case....”.
4. I have perused the entire record, before and after the dismissal of the suit. I find that on December 11, 2017, the plaintiff was directed to file and serve his paginated trial bundle containing his witness



statements and documentary evidence within 45 days and the matter was then slated for May 14, 2018 to confirm compliance. However, on the said date of May 14, 2018, the plaintiff had not only failed to comply with court's directions, but there was even no appearance on his side, yet the counsel for the 1st and 2nd defendants was present. Thereafter, there is nothing to indicate that the plaintiff was ever ready for the trial.

5. After the dismissal of the suit on June 16, 2021, the current application was not filed until one and a half years later in December of 2022.
6. It is crystal clear that there has been inordinate delay in the prosecution of this case and the same has been manifested throughout the lifespan of the case. The applicant cannot therefore blame the covid 19 pandemic for the delay. In any event, the courts were up and running during the covid period albeit virtually.
7. In the case of *Fran Investments Limited v G4S Security Services Limited* [2015] eKLR, it was stated that:

“The delay has not been satisfactorily explained and is a source of prejudice to the Respondent as well as to the fair administration of justice. These are sufficient reasons to refuse to reinstate a suit and let it lie in peace in judicial grave...”
8. Similarly, I find the delay herein has not been satisfactorily explained. The application dated December 2, 2022 is hereby dismissed with costs to the 1st defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kirui for Plaintiff

Magire for 1st & 2nd Defendants

Court assistant: Joan

