



Kariuki & 5 others v Kenya Law Reform Commission & 4 others (Miscellaneous Civil Application 55 of 2018) [2022] KEHC 15672 (KLR) (24 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15672 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION 55 OF 2018**

RB NGETICH, J

NOVEMBER 24, 2022

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACT NO. 4
OF 2015**

AND

**IN THE MATTER OF THE LAW AS APPLIED IN JAMES
GACHERU KARIUKI & 22 OTHERS VS KIAMBU COUNTY
ASSEMBLY & 3 OTHERS(2017) E KLR**

AND

**IN THE MATTER OF THE PROVISIONS OF SECTION 6 OF
THE KENYA LAW REFORM ACT COMMISSION NO.19 OF
2013**

AND

**IN THE MATTER OF PROVISION OF SECTION 23 OF THE
COUNTY GOVERNMENT ACT NO. 17 OF 2012**

BETWEEN

**JAMES GACHERU KARIUKI 1ST APPLICANT
CECILIA WAIRIMU NJOROGE 2ND APPLICANT
JOHN NGUGI MUNGAI 3RD APPLICANT
DANIEL KANGI KIMARI 4TH APPLICANT
PHYLIS WAMBII WAINOHO 5TH APPLICANT
ROSALINE NJERI CHANGE 6TH APPLICANT**

AND



KENYA LAW REFORM COMMISSION 1ST RESPONDENT
CABINET SECRETARY OF INTERIOR AND COORDINATION OF
NATIONAL GOVERNMENT 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT
COUNT EXECUTIVE COMMITTEE OF KIAMBU COUNTY 4TH
RESPONDENT
THE COUNTY ASSEMBLY OF KIAMBU 5TH RESPONDENT

RULING

1. This is a ruling on notice of motion application dated December 7, 2021 filed by the 5th respondent seeking the application dated February 26, 2018 to be dismissed for want of prosecution with costs.
2. The application is premised on the grounds that the applicant had not taken any necessary steps to prosecute the matter since June 22, 2018, a period of three (3) years; that the delay is inordinate, unreasonable and inexcusable occasioning great prejudice to the 5th respondent.
3. The application is supported by affidavit sworn by Valerie Nanjala Namulala. She averred that the applicants had not taken any necessary steps to prosecute the matter since 2018 and it is unjust for the applicants to drag the 5th applicant into expensive litigation without taking any necessary steps.
4. In response, the applicant filed a replying affidavit sworn by James Gacheru Kariuki on July 13, 2022. He averred that the delay in prosecuting the matter is not deliberate as the delay has been contributed by the pending appeal in the Court of Appeal Case No 155 of 2019, an appeal from the judgment in Judicial Review No 2 of 2017 delivered on February 8, 2019; that the delay is beyond the applicants control and urged the court to dismiss the application herein.
5. Mr Chege counsel for the 1st to 3rd respondent is not opposed to the application for the dismissal of the suit.

Analysis And Determination

6. I have considered the grounds of the application and averments in affidavits filed. I wish to consider whether the respondent has sufficiently explained the delay in prosecuting this matter.
7. Order 17 rule 2 of the *Civil Procedure Rules*, provides as follows:-
 - (1) 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 the cause is not shown to its satisfaction, may dismiss the suit.
 - (3) Any party to the suit may apply for its dismissal as provided in sub-rule 1”
8. The application herein has been brought by the 5th respondent/applicant whose argument is that the applicants/respondents have not prosecuted the matter since the filing of the application on June 22, 2018 a period close to three (3) years. Explanation given by the applicant for delay in prosecuting this matter is pendency of Court of Appeal No 155 of 2019 which is still pending determination.



9. The applicants/respondents contends the suits were initially consolidated by Justice Ngugi before Justice Meoli decided to determine each suit on its own and after the determination of JR 2 of 2017 delivered on February 8, 2019, the applicants filed Court of Appeal Case No 155 of 2019.
10. Order 41 rule 4(1) of the Civil Procedure Rules provide that no appeal or second appeal shall operate as a stay of execution/proceedings except in so far as the court of appeal may order a stay.
11. The applicants have not demonstrated to this court that they obtained stay of proceedings in this matter awaiting hearing and determination of appeal No 55 of 2019.
12. In the absence of stay of this proceedings, the appeal as filed cannot operate as a stay.
13. In the case of Nilesh Premchand Mulji Shah & Another t/a Ketan Emporium v MD Popat and others & another [2016] eKLR, the court stated as follows:-
 - “ 11. Nonetheless, article 159 of the Constitution and order 17 rule 2(3) gives the court the discretion to dismiss the suit where no action has been taken for one year and on application by a party as justice delayed without explanation is justice denied and delay defeats equity. That discretion must be exercised on the basis that it is in the interest of justice regard being had to whether the party instituting the suit has lost interest in it, or whether the delay in prosecuting the suit is inordinate, unreasonable, inexcusable, and is likely to cause serious prejudice the defendant on account of that delay”.
14. This application was filed in the year 2018. No explanation has been given as to why the applicants have not taken any steps to prosecute this matter for a period of three (3) years. The delay is inordinately long without sufficient explanation.
15. From the foregoing, the applicants/respondents have not adequately explained the reasons for the delay. I am inclined to allow the application to dismiss this matter for want of prosecution
- 16.

Final Orders:-

1. Application dated December 7, 2021 is hereby allowed.
2. This suit is dismissed for want of prosecution.
3. Costs to the respondents.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU

THIS 24TH DAY OF NOVEMBER, 2022.

RACHEL NGETICH

JUDGE

In the Presence of:

Kinyua/Martin – Court Assistant

No Appearance by Parties

For the Respondents – Absent

For the Applicant – Absent

