



**Murithi v Gachagua & another (Environment and Land Case Civil Suit
303 of 2017) [2023] KEELC 18132 (KLR) (20 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18132 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 303 OF 2017**

**LN MBUGUA, J
JUNE 20, 2023**

BETWEEN

SAMMY NDEGWA MURITHI PLAINTIFF

AND

RICHARD THAIRU GACHAGUA 1ST DEFENDANT

COUNTY GOVERNMENT OF NAIROBI 2ND DEFENDANT

RULING

1. This matter was scheduled for hearing today. Counsel for the plaintiff has informed the court that they cannot be able to proceed with the hearing because they filed an application on June 19, 2013 to cease acting and that they served the same.
2. In response, counsel for the 1st defendant averred that the case is over 6 years old and it has dragged in court due to the many applications made by the plaintiff. He contended that he is ready for the trial with witnesses.
3. I have perused the record and I find that this suit had been dismissed way back on January 28, 2019 for non-attendance.
4. In a Ruling delivered on November 3, 2021, this court gave directions for the suit to be reinstated on condition that the same was set down for hearing within the next 6 months. By then the court noted that, there were about 7 pending applications which the court dealt with suo moto while stating that parties should focus on the prosecution of the main suit'; and the court discouraged the filing of various applications.
5. In yet another Ruling delivered on December 8, 2021 in respect of plaintiffs application dated September 1, 2021, where plaintiff was seeking summary judgment, I again reminded the parties to focus on the hearing of the main suit.



6. The suit was then scheduled for pretrial directions on February 28, 2022 when M Munguti advocate holding brief for Mr Kokul for the plaintiff told the court that 'we have not complied'. Mr Kimathi for 1st defendant had however complied with pretrial directions.
7. The court proceeded to give directions that further final pretrial directions were to be given on July 20, 2022 and hence the hearing date scheduled for April 26, 2022 was vacated. The plaintiff was directed to file and serve their Trial Bundle by April 22, 2022 of which none compliance on the part of the plaintiff was to attract dismissal for the suit.
8. Come the date of July 20, 2022 and the plaintiffs counsel instead of addressing the court on the issue of preparation for the trial proceeded to inform the court that they had two pending applications!
9. The court proceeded to give directions on both the prosecution of the pending applications as well as the pre-trial directions; such that on November 2, 2022, the court proceeded to set down the matter for hearing of the main suit on June 20, 2023 (today) in the presence of counsel for plaintiff and 1st defendant.
10. The foregoing litigation history paints a grim picture on the part of the plaintiff.
11. Further no explanation has been advanced as to why the purported application was filed just a day before the hearing day, yet the plaintiffs counsel had been aware of the said date for a period of more than half a year (since November 2, 2022).
12. What more, this court had gone through the court's digital platform (CTS) and dealt with all the applications filed there in by noon of June 19, 2023. The alleged application was not in that list.
13. It follows that no directions have been given relating to any pending application. In the circumstances, and noting that today, the matter is coming up for the hearing of the suit, I give directions that case proceeds in open court at 10.00 am.

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

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Fosal holding brief for Kokul for Plaintiff

Kimathi for 1st Defendant

1st Defendant

Kajuju: Court assistant

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