

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 673 OF 1990

GEOFFREY RICHU.....APPLICANT

VERSUS

SAMUEL KINYANJUI.....1ST RESPONDENT

EDWARD NDUNGU.....2ND RESPONDENT

PETER KIAMBUTHI.....3RD RESPONDENT

RULING

1. The application dated 2nd June 2017 by the respondents Samwel Kinyanjui, Edward Ndungu and Peter Kiambuthi against the applicant Geoffrey Richu sought the cancellation and nullification of the subdivisions in respect of Dagoretti/Kinoo/600. This was one of the land parcels owned by the deceased Joseph Gitau Richo who died intestate on 20th December 1985. The grant of letters of administration intestate was issued to the applicant on 7th August 1990 and confirmed on 15th November 1991. The parcel was supposed to be shared equally among the parties herein. The application was heard by Justice M.W. Muigai who granted prayers 2 and 3 on interim basis. She asked that the matter be heard *inter partes*. On 2nd December 2020 I asked the parties to take a date in the registry for the hearing of that application.

2. Instead, the applicant filed an application dated 10th December 2020 seeking to have the application dated 2nd June 2017 dismissed with costs for want of prosecution. This was on the grounds that the respondents had for over three years failed to set the application down for hearing; that the failure to set down the application for hearing was inordinate, inexcusable and an abuse of the process of the court; and that the dismissal would relieve the applicant of the burden of having the matter hanging around his neck.

3. The application was served but received no response.

4. Parties were in court on 2nd December 2020 when it was directed that–

“the parties should take a date at the registry for *inter parte* hearing of the application.”

The application was a defended one. Instead of the applicant going to the registry to take a hearing date, he, in the same month, sought the dismissal of the matter for want of prosecution. I find that this was mischievous. Time began to run on 2nd December 2020. It is not true that no action had been taken in three years.

5. A decision to dismiss a suit for want of prosecution should not be taken lightly. The application should show that the delay complained of was inordinate; that the delay was inexcusable; that the applicant will be prejudiced if the suit is not dismissed; and that sustaining the suit to have it determined on its own merits would not be a fair and just action in the circumstances (**Argan Wekesa Okumu –v- Dima College Limited & 2 Others** [2015]eKLR).

6. I consider that the application dated 2nd June 2017 related to the serious matter concerning the distribution of the estate of the deceased. In the wider interests of justice, I direct that the application be heard on 9th June 2021. The application dated 10th December 2020 is dismissed, but the applicant will be paid costs.

DATED and DELIVERED NAIROBI this 19TH day of APRIL 2021.

A.O. MUCHELULE

JUDGE