



Kasitet & another (Suing as Administrators of the Estate of the Late Joseph Kipkorir Kasitet) v Chelang’a & 6 others; Komora Holdings Limited (Interested Party) (Environment & Land Case 450 of 2015) [2023] KEELC 19091 (KLR) (26 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19091 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 450 OF 2015**

**EO OBAGA, J
JULY 26, 2023**

BETWEEN

**DINAH CHEPCHUMBA KASITET 1ST PLAINTIFF
MOHAMMED ABDI DIIS 2ND PLAINTIFF
SUING AS ADMINISTRATORS OF THE ESTATE OF THE LATE JOSEPH
KIPKORIR KASITET**

AND

**RAHILA CHERUTO CHELANG’A 1ST DEFENDANT
SHAMIRA CHEPKEMEI 2ND DEFENDANT
IBRAHIM KIPKORIR 3RD DEFENDANT
MOHAMMED KIKOSGEI (SUED AS ADMINISTRATORS OF THE ESTATE OF
THE LATE ISMAEL JUMA KIPLAGAT CHELANG’A) 4TH DEFENDANT
NATIONAL LAND COMMISSION 5TH DEFENDANT
LAND REGISTRAR, UASIN GISHU COUNTY 6TH DEFENDANT
ATTORNEY GENERAL 7TH DEFENDANT**

AND

KOMORA HOLDINGS LIMITED INTERESTED PARTY

RULING

1. This is a ruling in respect of Notice of motion dated 27/2/2023 in which the Plaintiffs/Applicants seek to set aside the court’s order of 13/2/2023 dismissing their suit for non-attendance.



2. The Applicants contend that on the date of hearing, their Advocates on record informed them that he had instructed an advocate called Ms. Khayo who was to ask the court to allocate time for hearing. The Applicants proceeded to the court premises where they entered the court room which they thought was court number one.
3. They sat in court until the court arose and this is when they asked the Court Assistant what had become of their case. The court Assistant asked them to go to the registry as he did not have their file. They later proceeded to the registry where they were informed that their case had been dismissed for non attendance.
4. The Applicants were further informed that court number one does not sit where they had been. They went to their lawyer and asked him why he did not appear in court but he never gave them a satisfactory answer. They decided to change their lawyer.
5. The 1st to 4th Defendants/Respondents opposed the Applicants application through grounds of opposition dated 10/3/2023 but filed in court on 9/3/2023. The 1st to 4th Respondents contend that the Applicants' application is a nullity ab initio for want of form and capacity; that the Applicants are giving excuses; that the Applicants have not prosecuted their case which was filed in 2015 and that the Applicants' application is a waste of judicial time.
6. The 5th Defendant/Respondent opposed the Applicants' application through a replying affidavit sworn on 11/4/2023. The 5th Defendant/Respondent contends that the Applicants' application is frivolous, incompetent and an abuse of the process of court. The 5th Respondent further contends that Applicants have shown lethargy, indolence and appears to have lost interest in the suit.
7. The Interested party/Respondent opposed the Applicants' application through a replying affidavit sworn on 11/4/2023. The Interested party contends that the Applicants' application is frivolous, vexatious and abuse of the process of court. The Interested party further contends that the Applicants have exhibited laxity in prosecuting their case which was filed in 2015 and that in any case, the application was filed by an Advocate who is not properly on record.
8. The parties were directed to file written submissions on 12/4/2023 but as at 17/5/2023 it is only the 1st to 4th Respondents who had filed their submissions. I have carefully considered the Applicants' application as well as the opposition to the same. I have also considered the submissions by the 1st to 4th Respondents. The only issue for determination is whether the Applicants have demonstrated that they deserve the courts discretion.
9. In considering whether to set aside an order dismissing a suit, the court is obliged to consider the reason why a party did not attend court. In the instant case, the case was called out virtually at 9.15a.m on 13/2/2023. Ms. Khayo who held Mr. Oside's brief was informed that hearing was to proceed at 10.00a.m in open court. Later at 10.20a.m, the Plaintiffs and their counsel were not in court. It is only Ms. Odeyo for 6th and 7th Defendant who was present and Mr. Othuro for the Interested party. The suit was then dismissed for non attendance with costs to the 6th and 7th Defendants as well as the Interested party.
10. The Plaintiffs state that they were in court but their case was not called out. The reason for this is that they went to court number two which they thought was court number one. It is true that court number one used to be where court number two is currently. It is possible that the Applicants may have gone to a wrong court. This is a good reason for non attendance.
11. The Respondents have all attacked the application on the ground that it is incompetent. The reason for this is that the Advocate who filed it is not properly on record. Once a suit has been dismissed, the



dismissal order is as good as judgment. Any advocate coming in after the judgement has to have leave of the court to do so or have a consent from the previous lawyer. In the instant case, there is a consent which was filed allowing the present advocates to come on record. The present application is therefore not incompetent.

12. As I have already found that the Applicants have given a good reason why they were not in court number one, I proceed to allow the application with the result that the order made on 13/2/2023 dismissing the Applicant's application is hereby set aside. The dismissed suit is hereby reinstated for hearing. The Plaintiffs should ensure that this case is prosecuted and concluded within 12 months failing which it will stand dismissed without any further recourse to court. The costs of this application shall be in the case.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 26TH DAY OF JULY, 2023.

E. O. OBAGA

JUDGE

