



**Laboso & 34 others v Mageto & 2 others; Mara Coffee Millers & another (Applicant)
(Environment & Land Case 8 of 2023) [2025] KEELC 1304 (KLR) (18 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1304 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 8 OF 2023
MN MWANYALE, J
MARCH 18, 2025**

BETWEEN

**PAUL LABOSO & 34 OTHERS & 34 OTHERS & 34 OTHERS & 34
OTHERS PLAINTIFF**

AND

**WILSON JACK MAGETO 1ST RESPONDENT
DIRECTOR OF LAND ADJUDICATION TRANSMARA 2ND RESPONDENT
LAND REGISTRAR, TRANSMARA 3RD RESPONDENT**

AND

**MARA COFFEE MILLERS APPLICANT
ANGATA SUGAR MILLERS LIMITED APPLICANT**

RULING

1. The Notice of Motion application dated 4th November 2024, and filed by the 4th and 5th Defendants/Applicants the subject of this Ruling seeks dismissal of the suit for want of prosecution for being an abuse of the court process.

The same is brought under the provisions of Section 1B and 3A of the Civil Procedure Act and is premised on grounds interalia that; -

- i. The suit has been pending in court since the year 2018 without any practical steps being taken by the Plaintiffs/Respondents to prosecute the same.
- ii. The court set apart several days in October 2024 for hearing but the same did not proceed as the counsel for the plaintiffs “did not have relevant information to enable them prosecute the suit”.



- iii. That the Plaintiffs/Respondents are enjoying orders which curtail the enjoyment of the suit premises, Land Parcel Transmara/Moyoi/165 while being disinterested in prosecuting the instant suit.
 - iv. The suit before court is clearly an abuse of the due process of the court.
2. The application is supported by the affidavit of Shantilal Kanji Shali who reiterates the grounds in support of the application, alluding interalia that when the matter was set down for hearing the Respondents advocates frustrated the hearing by filing an application to cease acting, and the Respondents refused to attend court hence a manifestation of lack of interest to proceed with the matter, thus the continued presence of this unprosecuted suit is an abuse of the due process.
3. The Respondent have filed a Replying affidavit dated 04.11.2024, indicating that the matter took long to conclude for factors beyond the plaintiffs, and that the Applicants were joined the suit recently on 17th April 2023 and it is not true that they have been disadvantaged, given that their trial bundle had been filed on 20th July 2024.
4. That the suit is not ripe for dismissal as 3 years of inactivity have not lapsed.
5. The Replying affidavit equally makes scandalous depositions on the person of the two previous Judges who handled the suit, at paragraphs 12 to 25 which the court shall not dwell in.
6. The Applicants in their supplementary affidavit equally point out that Respondents have a duty to prosecute their case diligently and that some of the depositions by the Applicants are in fact disparaging remarks.
7. Grounds of opposition were filed by Sonoiya and Co. Advocates for the 17th, 18th, 21 to 26th 28th, 30th, 32nd and 35th Plaintiffs raising grounds interalia,
 - i. That the application is not premised on any known provisions of the law and clearly aimed at defeating the course of justice.
 - ii. That the application seeks a review of the adjournment that was granted.
8. That the delays in concluding this matter had everything to do with factors outside the control of the plaintiffs.
9. Thus, the application is frivolous, vexatious and an abuse of the court process.
10. The 1st, 2nd and 3rd Defendant/Respondent did not file any response to the application, nor did the Respondents represented by Mr. Walukha.
11. Parties were directed to file written submissions on the application.
12. It is the Applicants submission that Section 3A upon which their application is premised on, gave the court inherent jurisdiction to make orders as may be necessary for the ends of justice or to prevent abuse of the court process and they place reliance on the decision Kenya Power and Lighting Co. Ltd v Benzene Holdings Limited Hayco Paints [2016] eKLR.
13. The 1st to 12th Plaintiffs/Respondents submitted and gave reasons as to why the matter had delayed including the issue that the file had been called by the Judicial Service Commission following their complaint against an Honourable Judge who previously handled this case, as well as the counsel lacking instructions and thereafter being re-instructed in the matter. On legal issues they submitted that only order 17 of the Civil Procedure Rules allowed dismissal of a case for want of prosecution and since the



application was not founded on the said provisions the application was without merit, they argued the court to dismiss the application.

14. The other Plaintiffs/Respondents represented by the firm of Sonoiya and Mr. Walukha did not file submissions as did not the 1st, 2nd and 3rd Defendants/Respondents.

Issues For Determination

15. The issues for determination, arising from the application, the grounds of opposition and submissions are as follows; -
 - i. Whether or not the orders sought can be granted in the application as drafted?
 - ii. Whether or not they are merits in the application?

Analysis And Determination

16. As pointed out at paragraph 1 of the Ruling, the application seeks dismissal of the suit for want of prosecution and for being an abuse of the court process. It is premised on sections 1B and 3A of the *Civil Procedure Act*.
17. Order 17 (2) (1) of the Civil Procedure Rules empowers courts to dismiss suit for want of prosecution, while order 2 Rule 15 (1) (d) provides for striking out being an abuse of the court process.
18. It is the Applicants submission that Section 1B and 3A grant him the right to seek the orders he sought and he has placed reliance Kenya Power Limited v Benzene Holdings decision for the position that Section 3A empowers the court.
19. The Respondents submissions only dealt with the issue that no provisions have been cited to enable the orders sought granted.
20. The Supreme Court of Kenya in its decision in Petition No. E015 of 2024 Judith Nyagol v Judicial Service Commission and the Chief Registrar of the Judiciary expounded on the doctrine of Lex Specialis derogat Legigeralis, at paragraph 51 of the said decision, the court stated interalia “it is the rule of thumb in statute interpretation, that a specific law governing a matter should be applied instead of several law touching on the matter – lex specialis derogate legi genaris –
21. Applying that principle in the said case, they are specific provisions which deal with the issues of dismissal of suit for want of prosecution and for dismissal of a suit for being an abuse of the court process, as pointed out being order 17 and order 2 Rule 15 (1) (b). The Application herein was brought on the general provisions of Section 3A while specific provisions existed and the orders sought on the basis of the said principle of lex specialis derogate legi genalis the orders sought cannot issue.
22. Thus, in answer to issue number 1 the court finds that the orders sought cannot issue in the application as drafted.
23. Turning on the merits of the application, the gravamen of the application is that the suit ought to be dismissed for want of prosecution. I have perused the record and indeed the matter was filed in 2018, but the same has been active with hearing dates having been issued as recent as October 2024 when the matter did not proceed, so there has been no inactivity to warrant the filing of the application. And the application lacks merits and ought to fail as it hereby does.
24. The court has observed that the Replying affidavit deponed by Paul Laboso has made scandalous remarks on the Hon. Judges who previously handled this matter at paragraphs 12 to 25 thereof, Order 19 of the Civil Procedure Rules provides for matters to which an affidavit shall be confined to, and



Rule 6 empowers court to strike out from any affidavit any matter which is scandalous irrelevant and oppressive, and accordingly paragraphs 12 to 25 of the Replying affidavit of Paul Laboso deponed on 04.11.2024 are expunged from the affidavit.

25. In order to address the delay in hearing and determination of the matter the parties are hereby directed to,

Fle and exchange their documents, witness statements and list of issues within 42 days, the plaintiff and their respective counsels shall have 21 days from today to comply and the Defendants shall have 21 days after service. The matter shall be mentioned before the Deputy Registrar for compliance on 05.05.2025, whereafter confirmation of compliance a pre-trial conference date shall be given before me.

Disposition

26. The Result is that the application dated November 4, 2024 is hereby dismissed costs in the cause.

DATED AND DELIVERED AT KILGORIS THIS 18TH DAY OF MARCH 2025.

HON. M.N. MWANYALE

JUDGE

In the presence of

C/A Emmanuel/Slyvia

Ms. Kituyi for the 1st to 12th Plaintiffs

Ms. Chelangat for 17th, 18th, 21st, 23rd, 25th, 28th, 30th and 35th Plaintiffs

Mr. Walukhu for 13th, 14th, 16th, 19th, 20th, 27th, 31st and 33rd Plaintiffs

Mr. Wabwire for 1st to 3rd Defendants

Ms. Kebungo h/b for Ms. Nyamurongi for the 4th and 5th Defendants

Page 3 | 3

