



**Odeny (Suing as the Legal Representative of the Estate of Micah Odhiambo
Mbani-Deceased) v Ibrahim & 2 others (Environment & Land Case
778 of 2016) [2023] KEELC 20029 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20029 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 778 OF 2016
LN MBUGUA, J
SEPTEMBER 21, 2023**

BETWEEN

**MONICA AUMA ODENY (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF MICAH ODHIAMBO MBANI-DECEASED) APPLICANT**

AND

ABDIRIZAK HILLOW IBRAHIM 1ST DEFENDANT

ABDI HASSAN ALI 2ND DEFENDANT

THE BOARD OF TRUSTEES NSSF 3RD DEFENDANT

RULING

1. Before me is an application dated 14.6.2023 seeking orders for reinstatement of the suit. The applicant/ plaintiff contends that her advocate on record failed to attend court on several occasions, thus the mistake of her counsel should not be visited upon her.
2. The 3rd defendant opposed the application via grounds of opposition dated 21.7.2023 where it is argued that the records of the court indicate that the applicant has consistently been indolent.
3. I have considered all the rival arguments. The issue for determination is whether this suit should be reinstated.
4. In the case of *Mwangi Gachiengu & 2 others vs. Mwaura Githuku & Another* [2019] eKLR it was stated that

“it is trite law that a matter once filed in court does not belong to the litigant. It is the responsibility of the litigant to be in constant touch with his advocate on the position of the matter. Where a litigant goes to sleep after filing a suit, he cannot blame his advocate



for having not updated him on the position of the matter, or when the matter is dismissed because it has not been prosecuted or fixed for prosecution....”

5. The records of the court indicate that this suit was dismissed for want of prosecution way back on 17.1.2018. An application for reinstatement of the suit was only filed, 3 years later on 18.1.2021 but was not prosecuted hence its dismissal half a year down the line on 14.6.2021.
6. Another application dated 23.6.2021 was filed to set aside the orders of 14.6.2021. Vide a ruling of 27.1.2022, the court allowed that application, therefore reviving the earlier application of 18.1.2021 which was given a hearing date of 16.2.2022. The said ruling was delivered in the presence of counsel for the plaintiff/applicant.
7. Come the date of 16.2.2022 and there was no appearance for the plaintiff hence for a second time, the application dated 18.1.2021 was dismissed.
8. The facts set out herein depict the applicant as an indolent litigant. His suit was dismissed more than 5 years ago on 17.1.2018 and he cannot manage to prosecute his application for reinstatement of the suit dated 18.1.2021. The filing of another application dated, 14.6.2023 to bypass the status of that application of 18.1.2021 is an abuse of the court process.
9. I find that the application dated 14.6.2023 is not merited. The same is hereby dismissed with costs to 3rd defendant. Any other pending application is also hereby dismissed. The file is hereby marked as closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21st DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

