



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

PETITION 16 OF 2015

NELLY CHELANGAT MUTAI.....PETITIONER

-VERSUS-

JOSEPH WAITITU MWANGI & OTHERS.....RESPONDENT

RULING

1. The application before me dated 5th October, 2016 was filed by the 1st and 2nd defendants. They seek orders that the amended petition dated 2nd July, 2015 be dismissed for want of prosecution. It also seeks that costs of the application and the petition be awarded to the applicants.
2. The application is brought on the grounds that the petitioner had vide a petition dated 2nd April, 2015 sought a declaration that the actions of the 1st respondents were unconstitutional under **Articles 27, 29, 41 and 47 of the Constitution**; that she be granted anticipatory bail pending the hearing of the petition and that she be awarded exemplary damages and cost of the petition. Contemporaneously with the petition, the petitioner filed an application seeking anticipatory bail. That after filing both the petition and application, the petitioner had failed to prosecute her case.
3. The supporting affidavit of one **Joseph Waititu Mwangi**, the 1st respondent and applicant herein sets out the sequence of events since the filing of the petition. He avers that upon being served with the petition he filed a replying affidavit on 4th May, 2015 and grounds of opposition. That subsequently the petitioner sought leave on 23rd June, 2015 to amend the petition. She filed the amended petition on 6th October, 2016 but has not taken any step to prosecute the amended petition. The applicant further avers that the inertia on the part of the petitioner runs counter to the overriding objective of the court stipulated in **1A, 1B and 3A of the Civil Procedure Act**; and that the continued pendency of the matter was like a sword hanging over the heads of the applicants.
4. The petitioner did not respond to present application and neither did she attend court. According to the affidavit of service of one **Julius Kamotho Njaga** dated 5th January, 2018 and filed on 12th January, 2018, the firm of **Gordon Ogolla & Kipkoech** who were the advocates on record declined service stating that they no longer had instructions. There is nothing on record however to show that the firm of **Gordon Ogolla & Kipkoech** had ceased acting for the petitioner.
5. At the hearing of the application on 13th February, 2018, I allowed the applicant to urge the application in the absence of the petitioner. This is because it appeared to the court from the record, that neither the petitioner nor her counsel were interested in opposing the application.

6. The purpose of the Civil Procedure Rules cited by the applicant is to facilitate the expeditious disposal of suits. **Section 3A** of the **Civil Procedure Act** cited by the applicant reaffirms the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court. This being a petition however the governing rules would be **Rules 4, 5 and 6 of the Constitution of Kenya (Protection of Rights and Fundamental Freedom Practice and Procedure Rules 2013)**.

7. I have considered the application. The record shows that the petition was first filed on 2nd May, 2015 and amended on 6th July, 2015 that since then, the petitioner has not taken any active step to prosecute the petition. I have also perused the petition. It was seeking to prevent the arrest of the petitioner and a declaration that her constitutional rights were being violated. It is not known to the court whether the petitioner was ever arrested and charged. It is clear that she has either lost interest in the petition or that the petition has been overtaken by events. Whatever the petitioner's reason for shunning the court process, it is clear to the court that she cannot be allowed to continue as the applicant aptly describes "holding a sword over the heads of the respondents". I find the delay in prosecuting the petition inordinate and prejudicial to the respondents.

8. In view of the foregoing I allow the application dated 5th October, 2016 and order that the petition dated 2nd April, 2015 be and is hereby dismissed with no order to costs.

Orders accordingly.

Ruling delivered, dated and signed This 22nd day of February, 2018

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R. LAGAT KORIR

JUDGE

In the presence of:

C/A Emojong

N/A for the petitioners

N/A for respondent