



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**

**CIVIL APPEAL NO. 113A OF 2007**

**G N K.....APPELLANT**

**V E R S U S**

**N N .....1ST RESPONDENT**

**S N P (DCD).....2ND RESPONDENT**

**R U L I N G**

1. This is a ruling on an application dated 17/08/2017 seeking for the following prayers:-

*i. That this honourable court do summon the appellant Gerald Njue Kamuranga for the purposes of making an inquiry as to his health and state of mind.*

*ii. That the honourable court do appoint John Njiru Njue and/or Lydia Wanjira Njue as next friend/guardian ad litem for purposes of this appeal.*

*iii. That this honourable court be pleased to readmit the appeal for hearing.*

*iv. That this honourable court be pleased to transfer the appeal to the Environment and Land Court for hearing and disposal.*

*v. That preservatory orders be granted maintaining the status quo as regard land parcel No. [particulars withheld] be granted pending the hearing and determination of this appeal.*

2. The application is supported by the affidavit of the applicants J N N and L W N. It is deposed that the appellant suffers from senile dementia as a result of his mental infirmity. He is therefore incapable of taking care of himself or his property interest. It is further deposed that the failure to prosecute his appeal which was dismissed for want of prosecution was not deliberate. The applicants are the next of kin and guardians of the appellant who wish to be enjoined in this appeal with a view of having it reinstated.

3. It is further stated that there has been attempt to evict the family from the subject matter [particulars withheld] which the appellant had exchanged with the 1st respondent's land [particulars withheld].The 1st respondent gave out [particulars withheld] to the 2nd respondent instead of transferring it to the appellant. For this reason there is need for the respondents to be restrained from interfering with the quiet possession of the appellant and his family of [particulars withheld].

4. The applicants state that they have been advised by their advocate that in the meantime magistrates have no jurisdiction to hear land matters pursuant to a case pending determination in the Court of Appeal. It is their prayer that this case be transferred to the Environment and Land Court.

5. The application was opposed by the respondents on ground that this judgment was delivered in 1995 and the same was executed and land L.R. [particulars withheld] transferred to a 3rd party who has not been joined in this appeal. The appeal was dismissed for want of prosecution on 29/03/2012 and reviving it would cause injury to the respondents and the 3rd party.

6. The record shows that applicants filed an application dated 13/04/2012 seeking reinstatement of the dismissed appeal which was not prosecuted. This application is an afterthought and should be dismissed.

7. The respondents argue that the alleged senile dementia condition has not been supported by medical evidence and ought to be disregarded.

8. The record shows that judgment in Runyenjes CMCC No. 43 of 1995 was delivered 7/12/1995 to the effect that the appellant lost his claim for recovery of the land [particulars withheld]. The court granted him an alternative remedy for refund of KShs.36,000/= being the value of the land plus interest from 1985. The appellant filed this appeal the same year but failed to prosecute it leading to its dismissal.

9. The appellant filed an application for reinstatement of the appeal but did not prosecute it. The failure to prosecute the said application which is material to this case has not been explained by the applicants. The applicants annexed medical treatment notes which is inadequate to support the alleged mental illness. A comprehensive medical report by a doctor would have sufficed to support the application. It is the court that summoned the appellant for interview and called for a medical report from Embu Level 5 Hospital. It was confirmed that the appellant suffers from mental dementia and is therefore incapable of following court proceedings. However, this alone is not enough to allow this application. Other relevant factors have to be considered.

10. This notwithstanding, I find that the applicants who were at all the material time aware of the condition of the appellant who is their father ought to have taken the necessary action early enough to save the appeal. They failed to do the needful and are coming to court a bit late in the day. The judgment was delivered over 20 years ago and a lot of water has passed under the bridge. The respondents state that the plot was transferred to a 3rd party who has not been joined in this appeal.

11. I have perused the judgment of the Runyenjes court and I am of the considered opinion that the appeal has limited chances of success. Reinstating the appeal would be tantamount to condoning the conduct of indolent litigants. By this I am referring to the applicants the next of kin who are not in a hurry to come to court.

12. All considered, I find that this application has no merit and it is hereby dismissed with no orders as to costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF DECEMBER, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Mr. Gitonga for Applicants**

**Mr. Okwaro for Mugambi for Respondents**