



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 468 OF 2011**

**DAVID GATHUKA NJOROGE.....1ST PLAINTIFF**

**VERSUS**

**JOSEPH NJOROGE KAMAU.....1ST DEFENDANT**

**ANN MBAIREE NJOROGE.....2ND DEFENDANT**

**RULING**

1. Before me is an application dated 21.9.2021 where the Plaintiff seeks the following orders:

**1) Spent**

**2) That the order of the honourable Barasa (DR) made on the 24th day of September 1019 dismissing the suit filed herein be reviewed, varied and/or set aside.**

**3) That the suit filed herein on 25th July, 2011 and amended on 7th November 2017 be reinstated and the matter be transferred to Kiambu Law Courts for determination.**

2. The Plaintiff contends that he was not properly accorded a chance to be heard as the advocate on record had no proper instructions from the client prior to the matter being dismissed. The applicant further avers that the Covid-19 Pandemic caused cessation of movement which hindered his chances of meeting with his advocate.

3. The Applicant has reiterated those averments in his submissions. He invites the court to be guided by the provisions of **Article 50(1)** and **159** of the **Constitution** to the effect that justice should be done with fairness and without undue regard to procedural technicalities. To this end, the Applicant has relied on the case of **Simon Wachira Ngaga v Patrick Wamwirwa, Kerugoy (2013)eKLR**.

4. The 2nd Defendant has opposed the application vide her replying affidavit where she contends that the suit is over 10 years old and that no good reasons have been advanced for reinstatement of the suit. It is also averred that there was inordinate delay in bringing the current application where there was a 2 year delay.

5. I have considered all the arguments raised herein. I find that the order of 24.9.2019 was not given by the Deputy Registrar, it was issued by Hon. Judge Eboso who simply endorsed his earlier orders. It is noted that way back on 24.9.2018, Hon. Judge Eboso had given Orders whereby the Plaintiff was to file and serve a paginated trial bundle within 30 days failure to which the suit was to stand as dismissed. This was a self-executing order and in effect, there was no suit after 25.10.2018. Thus the orders of 24.9.2019 were merely restating the status of the suit.

6. I also find that the conduct of the Plaintiff in the prosecution of this suit which is more than ten years old has been wanting. No reasons have been advanced by the applicant as to why they did not comply with the court orders of 24.9.2018. After all, the Covid Pandemic did not rear its ugly head until more than 1 year later in year 2020.

7. Finally, I find that the current application was filed more than 2 years from the dated of 24.9.2019 and the delay thereof is inordinate.

8. In the case of **Habo Agencies Limited v Wilfred Odhiambo Musingo (2015) eKLR**, it was held that:

***“It is not enough for a party in litigation to simply blame advocates on record for all manner of transgressions in the conduct of the litigation Courts have always emphasized that parties have a responsibility to show interest in and follow up their cases even when they are represented by counsel”***

9. I find that the delay before and after the orders of 24.9.2019 is prolonged and inexcusable see **Mwangi S. Kaimenyi v Attorney General & Another (2014) eKLR**.

10. There was no suit existing even before 24.9.2019 going by the orders of 24.9.2018, hence there is also no suit capable of being transferred. The application dated 21.9.2021 is hereby dismissed with costs to 2nd Respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

**JOAN NJOROGE HOLDING BRIEF FOR M/S MUIGAI FOR THE APPLICANT/PLAINTIFF**

**COURT ASSISTANT: EDDER BARASA**