



REPUBLIC OF KENYA



KENYA LAW
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**Githua & another v Karanja & 2 others (Environment & Land Case
50 of 2019) [2022] KEELC 2890 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2890 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 50 OF 2019**

YM ANGIMA, J

MAY 12, 2022

BETWEEN

SIMON KARUIRU GITHUA 1ST PLAINTIFF

MWANGI GITHUA 2ND PLAINTIFF

AND

JAMES K KARANJA 1ST DEFENDANT

FREDRICK MUIRURI 2ND DEFENDANT

TITUS NDOKA GITHUA 3RD DEFENDANT

RULING

1. By a notice of motion dated 13.01.2021 based upon order 40 rule 7, order 17 rule 2(3) and order 51 rule 1 of the *Civil Procedure Rule* 2010 (the Rules), section 34 and 63(8) of the *Civil Procedure Act* (cap.21) and all enabling provision of the law the Defendants sought the following orders:
 - a) This honorable court be pleased to set aside, discharge or vacate the injunction orders issued to the applicants in the ruling delivered on June 27, 2012.
 - b) That this honorable court be pleased to dismiss this suit for want of prosecution.
 - c) The costs of this suit be awarded to the respondents/applicants.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 2nd defendant, Fredrick Muiruri on 13.01.22 and the exhibits thereto. The gist of the application was that the Plaintiffs have never taken steps to prosecute the suit since 2012 when they obtained interim orders of injunction. It was contended that the Plaintiffs were abusing the court process by enjoying interim orders for a long time without taking any steps to prosecute the main suit.



3. The record shows that the said application was filed under certificate of urgency on 17.01.2022 but it was not certified urgent for obvious reasons. There was absolutely no urgency in seeking dismissal of the suit for want of prosecution and for variation or discharge of interim orders granted in 2012. The court consequently directed that the application be served for inter partes hearing on 07.03.2022.
4. When the application was listed for hearing on 7.03.2022 the defendants did not attend court and neither did they file a response to the application. As a result, the defendants' advocates prosecuted the said application ex parte whereafter it was stood over to May 12, 2022 for ruling.
5. The court has considered the said application together with the material on record. The court has noted that the defendants had filed an application dated September 4, 2015 seeking similar orders. In fact, the orders sought in the instant application were lifted word for word from the earlier application. The grounds in both applications are also the same.
6. The record further shows that the earlier application was canvassed before Hon. Muniyao Sila J at Nakuru in the absence of the plaintiffs. By his ruling dated 31.10.2017 the honorable Judge dismissed the defendants' application with no order as to costs. The court found that by an order made on 22.05.2013 this suit was stayed pending the hearing and determination of Nakuru High Court Succession Cause No.497 of 2012 (the Succession Cause). Since there was no evidence before court to demonstrate that the Succession cause had been concluded the court held that it would be premature and improper to dismiss the suit for want of prosecution or to discharge the interim orders.
7. The court has noted from the record that the proceedings for revocation of the confirmed grant issued to the plaintiffs in the Succession Cause were concluded in 2018 by revocation of the grant. It would appear that the plaintiffs have not taken any positive steps to prosecute the suit since 2018. They did not even file any response to the application to explain their delay in prosecuting the suit despite service. In the premises, the court is inclined to hold that there has been inordinate delay in prosecuting the instant suit without reasonable justification or excuse.
8. The upshot of the foregoing is that the court finds merit in the defendants' application for dismissal of the suit for want of prosecution. Accordingly, the defendants' notice of motion dated 13.01.2022 is hereby allowed as prayed in terms order Nos. 1, 2 and 3 thereof.

Orders accordingly.

RULING DATED AND SIGNED IN CHAMBERS AT NYAHURURU THIS 12TH DAY OF MAY, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Parties - absent

CA- Carol

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Y. M. ANGIMA

JUDGE

