



**Rosalia v Sitienei & another (Environment & Land Case  
8 of 2022) [2022] KEELC 128 (KLR) (14 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 128 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE 8 OF 2022  
MN MWANYALE, J  
JUNE 14, 2022  
(FORMERLY ELDORET E & L CASE NO 79 OF 2012)  
(FORMERLY HCC NO 142 OF 2001)**

**BETWEEN**

**JELIMO KEINO ROSALIA ..... APPLICANT**

**AND**

**SHERIL SITIENEI ..... 1<sup>ST</sup> RESPONDENT**

**JONAH KIPTANUI KOSGEI ..... 2<sup>ND</sup> RESPONDENT**

*(This suit had been dismissed on the courts own motion  
on 22/9/2015 and the applicant wanted it reinstated)*

**RULING**

1. This suit was dismissed on the Courts own motion on 22/9/2015. The Court records the dismissal as the inordinate delay of 4 years since the last step to have been taken in the matter on 13/11/2009, hence the dismissal under Order 17 Rule 2 of the *Civil Procedure Rules*.
2. Vide her Application dated 9<sup>th</sup> March 2022, the Plaintiff/Applicant seeks to reinstate the suit, and to replace the Plaintiff with her son Zedekiah Kiprop Cheruiyot. The application is supported by the affidavit of Zedekiah Kiprop Cheruiyot a stranger in the matter.
3. The basis for the application is that;
  - a) The Respondent has fraudulently acquired the title deed of the suit property after suit herein was dismissed for want of prosecution.
  - b) Applicant is in danger of being evicted from the suit property if the Court protection is delayed.



- c) That the notices putting the Court in Motion to dismiss the case were not received by the Applicant.
4. The Court directed the application which had been filed under a certificate of urgency to be served upon the Respondents.
  5. The matter was to proceed by way of oral submissions on 13/6/2022.
  6. On the said 13/6/2022, the Court was satisfied as to service on the Respondents, upon perusal of the affidavit of service and deemed the Application unopposed and allowed Mr. Kiptoo Advocate holding brief for Mr. Pala to proceed with his oral submissions.
  7. In his submissions, Mr. Kiptoo indicated that the Applicant was sickly and not aware that the suit had been dismissed and that the mistake for the Advocate should not be visited on the innocent litigant.
  8. Upon perusal of the annexures in the application, the Court notes that contrary to ground 3 of the application, that the notices putting the Court in motion to dismiss the case was not received by the Applicant; actually the notice annexed by the Applicant was received by the firm of Kimaru Kiplagat Advocates on 9<sup>th</sup> February, 2015.
  9. Kimaru Kiplagat Advocates were the advocates then on record for the Plaintiff/Applicant herein; hence service was actually effected on the Applicant Advocates.
  10. The main issue for determination is whether this suit should be reinstated after its dismissal for want of prosecution in the year 2009.
  - 11) The test in such a scenario was laid out in the case of *Ivita -vs- Kyumbu* (1984) KLR 441 where the Court said.... “ the decision whether a suit should be reinstated for trial is a matter of justice and it depends on the facts of the case.....the test is whether the delay is prolonged and inexcusable, and it is can justice be done despite such delay, justice is justice to both the Plaintiff and the Defendant, so both parties to the suit must be considered and the position of the judge too..... He must show that justice will not be done in the case due to prolonged delay on the part of the Plaintiff.....”

As noted the Respondent did not file any opposition to the application. However the Applicant did not address the Court on the prolonged delay. At the time of the dismissal on 22/9/2015 almost seven years ago, the Court noted that no action had been taken since 2009 noting that the suit was filed on 20<sup>th</sup> June 2001.

The application has been brought after an inordinate delay of seven years, yet no explanation save for the mistake of Counsel has been advanced.

The Court thus finds the delay not only inordinate but also unexplained and declines to exercise its discretion to reinstate the suit.

Accordingly the application dated 9<sup>th</sup> March 2022 is hereby dismissed and the suit remains dismissed.

12. Orders accordingly.

**DATED AND DELIVERED AT KAPSABET THIS 14<sup>TH</sup> DAY OF JUNE, 2022.**

**HON. JUSTICE M. N. MWANYALE**

**JUDGE.**

