



Elangata-Wuas Group Ranch (Suing through Its Registered Group Ranch Representative Officials) v County Government of Kajiado & 2 others (Environment & Land Case 443A of 2017) [2022] KEELC 3122 (KLR) (9 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3122 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 443A OF 2017**

MN GICHERU, J

JUNE 9, 2022

BETWEEN

ELANGATA-WUAS GROUP RANCH (SUING THROUGH ITS REGISTERED GROUP RANCH REPRESENTATIVE OFFICIALS) APPLICANT

AND

COUNTY GOVERNMENT OF KAJIADO 1ST RESPONDENT

COUNTY OF KAJIADO, LAND SURVEYOR 2ND RESPONDENT

LAND REGISTRAR, KAJIADO 3RD RESPONDENT

RULING

1. This ruling is on the application dated April 22, 2021 which is by the plaintiff/ applicant and seeks to set aside the order dated September 16, 2019 which dismissed the plaintiff's suit for want of prosecution.
2. The application which is said to be under order X11 rule 7 of the *Civil Procedure Rules* and section 3A of the *Civil Procedure Act* and all other enabling provision of law is based on many grounds chief among which is that the plaintiff was never served with the notice to show cause.

The other grounds are that there was an attempt to settle the matter out of court hence the delay, that the plaintiff had fully disclosed its case, no prejudice will be occasioned to the defendants and that the plaintiff is a genuinely aggrieved party who should not be condemned unheard.

Joel Kanchori Ole Singeen, the current chairman of the plaintiff has sworn a supporting affidavit dated 22/4/2021 and a supplementary affidavit dated 20/12/2021 reiterating the lack of service of the notice to show cause and the prejudice they stand to suffer if the application is not allowed.
3. The application is opposed by the first defendant and Austin Sekeyian, the County Attorney for the first defendant has sworn a replying affidavit dated June 9, 2021. In the affidavit, the County Attorney



says that the group ranch was dissolved and has no chairman contrary to the deposition by Mr. Kanchori.

He adds that the application is incompetent and an abuse of the court process for having been filed two years after the dismissal of the suit and since equity aids the vigilant not the indolent, then the application should be dismissed.

4. Counsel for the parties filed written submissions on 26/1/2022 and 4/5/2022 respectively. The submissions articulate the position each side has taken and include case law.
5. I have carefully considered the application in its entirety including the affidavits, the submissions and the entire record.

I find that there is no evidence to show that the plaintiff's counsel was aware that the matter was listed for dismissal on 16/9/2019 when it was dismissed.

On 6/5/2019 when the date for dismissal was given, the plaintiff's counsel was not present in court. He was not served with any notice to show cause. There is no affidavit of service either from the registry or from the defendant's counsel to prove that there was service.

The Constitution of Kenya at article 50(1) provides that every party to a dispute has a right to a fair hearing. A fair hearing includes being served with court processes and being given adequate opportunity to participate in proceedings before the court.

In all the circumstances of this case, I find that it is fair and just to allow the application dated April 22, 2021 so that the plaintiff is not condemned unheard.

I so direct.

Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

