



**Ngubiru & 3 others v Gachewa (Environment & Land Case  
169 of 2013) [2022] KEELC 3326 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3326 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 169 OF 2013  
LC KOMINGOI, J  
JUNE 9, 2022**

**BETWEEN**

**PETER GITHINJI NGUBIRU ..... 1<sup>ST</sup> PLAINTIFF  
SAMUEL NJUE NGIRIRI ..... 2<sup>ND</sup> PLAINTIFF  
OLANDA LORDVICUS SHIBIE WAMEYO ..... 3<sup>RD</sup> PLAINTIFF  
FRANCIS NG'ANG'A WANYOIKE ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**SOLOMON IRERI GACHEWA ..... DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 10<sup>th</sup> January 2022 brought section 10 of the *Judicature Act*, rule 3(1) and (2) of the High Court (practice and procedure rules), Part III of the High Court (Organization and Administration) (General) Rules, 2016, section 3A, 3B of the *Civil Procedure Act* of 2010, order 42 rule 6 and order 12 rule 6 of the Civil Procedure Rules and all the other enabling provisions of the law.
2. It seeks orders:-
  - a. Spent.
  - b. That an order be and is hereby granted reinstating for purposes of being heard on merit the application dated 2<sup>nd</sup> March 2021 which was dismissed by the order of this honourable court issued on the 13<sup>th</sup> October 2021.
  - c. Spent.
  - d. Spent.



e. That the cost of this application be granted.

3. The grounds are on the face of application and set out in paragraphs 1 to 14.
4. The application is supported by the affidavit of Solomon Ireri Gachewa, the Defendant/Applicant herein sworn on the 10<sup>th</sup> January 2022.
5. The application is opposed. There is a replying affidavit sworn by Peter Githinji Ngubiru, the 1<sup>st</sup> Plaintiff/Respondent sworn on the 9<sup>th</sup> February 2022.
6. It is the Defendant's/Applicant's case that he should be given an opportunity to ventilate his case. Further that a mistake of counsel ought not to be visited on a litigant.
7. The Plaintiffs/Respondents on the other hand contend that allowing the application will not serve any useful purpose in light of the defence filed. Further that the notice of motion dated 2<sup>nd</sup> March 2021 was dismissed for non attendance and that this application has been brought after inordinate delay.
8. I have considered the notice of motion and the affidavit in support. I have considered the affidavit in response and the oral submissions. The issue for determination is whether this application is merited.
9. I have gone through the court record. The same is clear. The Defendant has never been desirous of prosecuting his case. The Plaintiffs case was heard exparte after the same was confirmed for hearing at 11:30 a.m. on 1<sup>st</sup> October 2018 in the presence of counsel holding brief for Mr. Muriuki for the Defendant.
10. On the 1<sup>st</sup> November 2018 Mr. Ong'anda for the Defendant sought time so that parties could reach a settlement. On the 13<sup>th</sup> February 2019, parties sought more time to finalise on settlement.
11. On the 9<sup>th</sup> April 2019, the Defendant's counsel sought more time for parties to reach a settlement.
12. On the 15<sup>th</sup> July 2019, Mr. Maosa stated that he had just come on record for the Defendant. The Defendant was given time to comply with Order 11 of the Civil Procedure Rules and the matter was set for mention on 14<sup>th</sup> May 2020.
13. On the 7<sup>th</sup> December 2020, there was no appearance for the Defendant and the matter was set down for judgment. Judgment was delivered on 18<sup>th</sup> February 2021.
14. On the 2<sup>nd</sup> March 2021 the Defendant/Applicant filed an application to set aside the judgment of 18<sup>th</sup> February 2021. The same was not prosecuted culminating in the dismissal on 13<sup>th</sup> October 2021.
15. The Defendant/Applicant filed this application on 10<sup>th</sup> January 2022 about three months later. In my view the same has been brought after undue delay. The delay has not been explained.
16. I have gone through the defence on record. The Defendant admits he executed the sale agreements. In my view, allowing this application and/or setting aside the judgment dated 18<sup>th</sup> February 2021 will not serve any purpose in light of the defence.
17. The Plaintiffs ought to be allowed to enjoy the fruits of their judgment.
18. In conclusion, I find no merit in this application and the same is dismissed with costs to the Plaintiffs.
19. It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 9<sup>TH</sup> DAY OF JUNE 2022.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Kimani for the Plaintiffs

Ms Orina for the Defendant

Steve - Court Assistant

