Kimani & another v Gichui & another (Environment & Land Case 1081 of 2016) [2022] KEELC 3233 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3233 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 1081 OF 2016

JO MBOYA, J

JULY 28, 2022

BETWEEN

DANIEL KAMUNYU KIMANI ..... 1ST PLAINTIFF

GEORGE WANYOIKE NGURI ..... 2ND PLAINTIFF

AND

PAUL K. GICHUI ..... 1ST DEFENDANT

WEMBLEY VILLAS LIMITED ..... 2ND DEFENDANT

RULING

Introduction and Background

1. Vide the Notice of motion Application dated the April 6, 2022, the Plaintiffs herein have approached the court seeking for the following Reliefs;

    i. This Honourable Court be pleased to Review the orders closing the Plaintiffs' case and/or grant Leave to the Plaintiff to re-open their case for purposes of calling the Valuer to adduce Evidence and produce the Valuation report.

    ii. The Supplementary List of Documents and the Supplementary List of Witnesses filed on the March 10, 2022be deemed as duly filed and properly on record.

    iii. This Honourable Court be pleased to grant to the Plaintiffs' Leave to Further Amend the Plaint to include the Relief of Special Damages per the annexed Draft Further Amended Plaint.

    iv. The costs of this Application be provided for.

2. The subject Application is premised and/or predicated on the Ground enumerated at the foot thereof and same is further supported by the affidavit of one namely, Daniel Kimani Kamunyu, sworn on the April 6, 2022and to which the deponent has attached a copy of the Draft Further amended Plaint.

3. Upon being served with the subject Application, the Defendants/Respondent responded thereto vide Grounds ground of opposition dated April 19, 2022, raising various grounds in opposition thereto.

Depositions by the Parties:

Plaintiffs'/ Applicants' Case:

4. Vide Supporting Affidavit sworn by Daniel Kamunyu Kimani, hereinafter referred to as the deponent, same has averred that he is the 1st Plaintiff/Applicant and therefore conversant with the facts of the subject matter and hence competent to swear the affidavit.

5. On the other hand, the deponent has further averred that same has similarly been authorized and/or mandated to swear an affidavit on behalf of the 2nd Plaintiff.

6. Further, the deponent has averred that the 2nd Plaintiff/Applicant and himself, duly instructed the law firm of M/S Kanyi Keruchi & Company Advocates, to file and/or lodge the subject suit and that pursuant to their instructions the subject suit was duly filed on the 6th September 2016.

7. Be that as it may, the deponent has averred that subsequently, the 2nd Plaintiff/Applicant and himself proceeded to and instructed their current advocate to take over the conduct of the subject matter. For clarity, it has been pointed out that the current advocate thereafter took over the conduct of the subject matter on the December 2, 2020.

8. Other than the foregoing, the deponent has averred that on or about the 1st of December 2021 their advocates on record adopted a consent dated the November 23, 2021, whereby same vacated and/or discharged a previous order made by the court on the September 28, 2020.

9. Nevertheless, the deponent has averred that thereafter his advocates on record sought for and obtained leave to file a Further Bundle of Documents, Supplementary List of Witness and Witness Statements, in readiness to progress the Plaintiffs'/Applicants' case.

10. On the other hand, the deponent has further averred that the 2nd Plaintiff/Applicant and himself also proceeded to and instructed the firm of Icon Valuers Limited to carryout and/or conduct valuation in respect of the suit properties and thereafter prepare a valuation report. In this regard, the deponent stated that a valuation report was prepared and the same was filed in court as part of the Plaintiffs consolidated bundle dated the March 8, 2022.

11. Nevertheless, the deponent has stated that when the matter came up for hearing on the March 24, 2022, same was surprised that the Plaintiffs' case had indeed been heard and closed. However, the deponent has averred that the fact of the closure of the Plaintiffs'/Applicants' case was not known to their current advocates.

12. Be that as it may, the deponent has stated that the closure of the Plaintiffs'/Applicants' case is prejudicial and will affect their claim in respect of the subject matter.

13. In any event, the deponent has averred that the impugned closure was premature and was done without calling a very critical and crucial witness.

14. Based on the foregoing, the deponent on behalf of the 2nd Plaintiff/Applicant and himself has therefore implored the court to grant liberty to R-amend the Plaint, re-open the case and to file Further List of Witnesses and Bundle of Documents, to enable the court reach a just determination of the matter.

Response by the Defendants'/respondents':

15. The Defendants'/Respondents' responded to the subject Application vide Grounds of opposition wherein same contended as hereunder;

    i. The Plaintiffs' have not explained why the Evidence they seek to introduce was not called at the hearing.

    ii. The Application does not satisfy the condition that require before the grant of the orders sought and the Plaintiffs have not given any sufficient reasons why the case should be reopen.

    iii. The Plaintiffs by filing this Application are only seeking to fill gaps in the evidence and or in their case, which is very prejudicial to the Defendants and the court should disallow the same by dismissing this application with costs.

    iv. The subject Application is a total abuse of the Court process, frivolous, vexatious and only meant to embarrass and prejudice the Defendants herein and ought to struck out with costs.

Submissions by the Parties:

a.Plaintiffs'/applicants' Submissions:

16. The Plaintiffs'/Applicants' filed written submissions dated the May 26, 2022and in respect of which, same itemized four issues for determination;

17. First and foremost, counsel for the Plaintiffs herein submitted that the Plaintiffs' case was heard and closed on the July 20, 2020, before the Plaintiffs' could call a critical and/or essential witness, whose evidence would be important to enable the court to reach a just determination in respect of the subject matter.

18. Owing to the fact that the case was closed without calling the said witness, counsel for the Plaintiffs has therefore submitted that it would be in the interest of justice to re-open the Plaintiffs' case and grant the Plaintiffs the liberty to call a valuer, with a view to producing a Valuation report, in respect of the suit properties.

19. In any event, Learned Counsel has submitted that the adduction of the evidence by the Valuer and the production of the intended valuation report would not be entirely foreign and/or new insofar as the subject claim is premised on Refund of the monetary value of the suit properties.

20. Besides, Counsel has also submitted that re-opening of the case is at the discretion of the court and the court should consider the obtaining circumstance and the wider Interest of Justice, while dealing with such an Application.

21. Secondly, counsel for the Plaintiffs' has also submitted that the court has a discretion to grant liberty to the Plaintiffs'/Applicants' to Further Amend the Plaint and to introduce the claim for Special Damages, premised on the monetary value of the suit properties.

22. At any rate, counsel has further submitted that the introduction of the Special Damages claim, which is the basis of the intended amendment, will not alter, vary and/or change the character of the subject suit.

23. Be that as it may, counsel has further submitted that the intended amendment will similarly, not prejudice the Defendants/Respondents, insofar as the Defendants would be at liberty to amend their Statement of Defense, if need be and file further documents, where appropriate.

24. Other than the foregoing, Learned counsel for the Plaintiffs has further submitted that amendments like the one beforehand, ought to be freely allowed, so as to enable the Parties to plead the entirety of their case for effective and effectual determination by the court.

25. Thirdly, Learned counsel for the Plaintiffs has submitted that subject to re-opening the Plaintiffs case, the court should be pleased to allow the Plaintiffs' to file Further List of Documents and List of witness and witnesses statement so as to facilitate the adduction of the intended further evidence.

26. Further, counsel for the Plaintiffs has submitted that unless the Plaintiffs are granted the liberty to file the supplementary list of documents and the intended list of witnesses, same shall be prejudiced and/or adversely affected.

27. In support of the foregoing submissions, counsel for the Plaintiffs/Applicants' has relied on various decisions, *inter-alia*, *Susan Wavinya Mutavi versus Isaac Njoroge & Another* (2020)eKLR, *Odoyo Osodo versus Rael Obara Ojuk & 4 Others* (2017)eKLR, *Central Bank of Kenya versus Trust Bank Limited & 5 Others* (2000)eKLR and *St. Patrick's Hill School Ltd versus Bank of Africa Kenya Ltd* (2018)eKLR.

b. Defendants'/respondents Submissions':

28. The Defendants/Respondents filed their written submissions dated the July 1, 2022, and same have raised three pertinent issues, namely; that the Application by the Plaintiffs'/Applicants' wherein same are seeking to re-open the Plaintiffs' case, with a view to adducing further evidence (both oral and documentary), is meant to enable the Plaintiffs herein to fill the gaps which became apparent and evident after the cross examination by counsel for the Defendants.

29. Further, counsel for the Defendants has submitted that though the court has a discretion to grant the application for re-opening a Party's case, such an Application ought to be treated with necessary precaution and circumspection, to ensure that a Party is not seeking to plug gaps which were exposed during cross examination.

30. On the other hand, counsel further submitted that in any event, it is incumbent upon the Applicant to explain the reasons and/or avail explanation as to why the evidence that is sought to be introduced, was neither available nor tendered at the onset.

31. Secondly, counsel for the Defendants has also submitted that the issue of the valuation and the value of the suit property was at the foot of the subject matter right from the inception, when the suit was filed and therefore the Plaintiffs were aware that a valuation report, would be essential and/or critical.

32. Besides, Learned counsel for the Defendants has further submitted that the Plaintiffs' herein knew and were aware that a valuer would be a critical witness, to prove the value of the suit properties, which anchors the claim beforehand.

33. Nevertheless, counsel has submitted that despite being aware of the foregoing, the Plaintiffs herein, who are the owners of the case did not exercise due diligence, to procure and place before the court all the relevant materials, necessary to support their claim.

34. In the premises, Learned counsel has submitted that the conduct of the Plaintiffs herein, does not warrant the exercise of Equitable discretion in favor of the Defendants, either as sought or at all.

35. Finally, Learned Counsel for the Defendants has also submitted that the subject Application has been mounted with undue delay, which has not been explained and/or accounted for, by the Plaintiffs/Applicants.

36. In support of his submissions, Learned Counsel for the Defendants has relied on *inter-alia*, the case of *Susan Wavinya Mutavi versus Isaac Njoroge & Another* (2020)eKLR, *Joseph Ndung Kamau versus John Njihia* (2017)eKLR and *Odoyo Osodo versus Rael Obara Ojuk & 4 Others* (2017)eKLR.

Issues for Determination:

37. Having reviewed the subject Application, the affidavit thereto and the Response filed by the Defendants; and having similarly considered the written submissions filed on behalf of the Parties, the following issues do arise and are thus germane for determination;

    i. Whether the Plaintiffs'/Applicants' Application for amendment is merited.

    ii. Whether the Plaintiffs'/Applicants' case ought to be re-opened, either in the manner sought or at all.

    iii. Whether the subject Application has been mounted with undue and/or Inordinate delay.

Analysis and Determination:

Issue Number 1:

Whether the Plaintiffs'/Applicants' Application for Amendment is merited.

38. Before venturing to address and/or deal with the issue herein, it is appropriate and/or imperative to state that amendment of pleadings is at the discretion of the court, even though the court is called upon to exercise such discretion judiciously, taking into account a number of issues; inter-alia, the nature of the proposed amendments, the length of delay prior to the filing of the Application, the antecedent conduct of the party as well as the likely prejudice, if any, to be suffered by the adverse party.

39. On the other hand, it is also important to recall that an Application for amendment made prior to and/or before the commencement of the substantive hearing ought as a matter of general practice, to be freely allowed, unless such an Application is likely to occasion grave Injustice to the adverse Party.

40. Premised on the foregoing General Principles, it is now appropriate to consider the subject Application by the Plaintiffs'/Applicants', which essentially seek to introduce a claim for Special Damages, which was hitherto not part of the pleadings before the court.

41. Whereas the Plaintiffs have contended that the introduction of the Special Damages claim, shall not generate a new and distinct cause of action, what is apparent is that the said claim was neither part of the original Plaint nor the amended Plaint, both of which had previously been filed by the Plaintiffs herein.

42. To my mind, the introduction of the special damages claim, which was not obtaining in the previous pleadings ipso facto, introduces a separate and distinct claim, which the Defendants herein shall be called upon to respond to and or defend.

43. On the other hand, it is also apparent that the introduction of the Special Damages claim, shall also alter and/or change the nature and cause of action, which the Plaintiffs herein, shall wish to ventilate before the court.

44. Further, it is also important to point out that the suit contract which anchors the subject claim was entered into on the 7th January 2008 and in this regard, the intended amendment, with a view to implead Special Damages claim, is likely to defeat a legitimate and accrued Right premised on the Law

of Limitation and essentially, the provisions of Section 4(1) of the *Limitations of Actions Act*, Chapter 22, Laws of Kenya.

45. Notwithstanding the foregoing, it is also sufficient to note that the issue of the value pertaining to the suit properties was well within the knowledge of the Plaintiffs and their previous counsel and hence, with the exercise due diligence, the preparation of the intended valuation report, ought to have been dealt with and/or acted upon prior to the commencement of the suit and/or immediately upon the filing of the suit.

46. Be that as it may, even though the issue of valuation over and in respect of the suit property, colored the original Plaint and was thus within the knowledge of the Plaintiffs, the Plaintiffs herein have not proffered any reason and/or explanation as to why the valuation was never done at the onset.

47. Notwithstanding the foregoing, the Plaintiffs' have also not supplied and/or availed any explanation as to why it took same a total of six (6) years, after the filing of the suit, before waking up to conceive the importance of a Valuation report in respect of the subject claim.

48. Surely, a claimant seeking leave to amend, like the Plaintiffs beforehand must appreciate that whenever same requires an exercise of discretion of the court, then it behooves same to supply the court with all the relevant information and or explanation necessary to invoke the exercise of Equitable Discretion.

49. At any rate, where there is some delay, irrespective of the length of delay, it is imperative that the claimant do place before the court explanation as to why the impugned act was not taken in the first place and besides, why the act was not taken timeously and with due promptitude.

50. To my mind, the subject Application seeking leave to Further Amend the Plaint by the Plaintiffs, has been filed with undue and with inordinate delay. Consequently and in the premises, the subject Application is defeated by the Doctrine of latches.

51. The other perspective, which is also essential to address is the likely consequence of the amendments. Suffice it to point out, that the intended amendment is destined to enable the Plaintiffs to bring forth further documents and evidence, whose import and tenor shall expand the latitude of the Plaintiffs claim.

52. In my considered and respectful view, the intended amendment, shall no doubt occasion and/or inflict undue prejudice and grave injustice upon the Defendants/Respondents.

53. To buttress the observation enumerated in the preceding paragraph, it is apt to take cognizance of the dictum of the Court of Appeal in the case of *Central Bank of Kenya versus Trust Bank Ltd & 5 others* [2000]eKLR, where the court stated as hereunder;

> 'The settled rule with regard to amendment of pleadings has been concisely stated in Vol.2, 6th Ed. at P.2245, of the AIR Commentaries on the Indian Civil Procedure Code by Chittaley and Rao, in which the learned authors state:
>
> > "that a party is allowed to make such amendments as maybe necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.

54. Other than the foregoing decision, the circumstances under which the subject amendment can be allowed and/or otherwise, was also considered by the court of appeal in the case of *Elijah Kipngeno*

Arap Bii v Kenya Commercial Bank Limited [2013] eKLR, where the court of appeal stated as hereunder;

> The law on amendment of pleading in terms of section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from Bullen and Leake & Jacob's Precedents of Pleading - 12th Edition, in the case of Joseph Ochieng & 2 others vs. First National Bank of Chicago, Civil Appeal No. 149 of 1991 as follows:-
>
> " The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts." (underline supplied)

55. Recently, the Court of Appeal revisited the issue of amendments sought for after the close of the hearing by one side vide the case of *Catherine Koriko & 3 others versus Evaline Rosa* [2020] eKLR, where the Court of Appeal underscored the position as hereunder;

> Comparatively, in the South African case of Robinson –v- Randfontein Estates Gold Mining Company Limited, 1925 AD 173 Innes CJ, who delivered the judgment with which the majority of the court concurred, declined to interfere with the trial court's refusal to allow an amendment. The trial court had refused to allow the amendment on the ground of prejudice to the defendant. The amendment, if allowed, would have introduced a new factor into the case: it would, almost certainly have involved the calling of a witness who had not been called.

56. Premised on the foregoing case law and taking into account the likely consequence of the intended amendment, I come to the conclusion that the effects thereof shall indeed occasion undue prejudice and grave Injustice upon the Defendants/Respondents.

57. In a nutshell, it is my considered finding and holding that the Application for amendment beforehand, is not meritorious.

Issue Number 2 & 3

Whether the Plaintiffs'/Applicants' case ought to be re-opened, either in the manner sought or at all.

Whether the subject Application has been mounted with undue and/or inordinate delay.

58. Other than the limb of the Application seeking to re-amend the Plaint, the Plaintiffs' have also sought the liberty to re-open the Plaintiffs case, with a view to adducing further evidence.

59. For the avoidance of doubt, the intended further evidence that the Plaintiffs are keen to adduce, is that evidence that had not been placed before the court either at the onset or during the hearing of the Plaintiffs' case.

60. Besides, it is also appropriate to state that the intended new evidence, is evidence that the Plaintiffs did not have at the onset, but are now keen to source for, procure and bring forth, subject to the re-opening of the case. For clarity, it is evidence, which the Plaintiffs hitherto did not intend to produce and/or relie on from the inception of the case

61. Be that as it may, the question that begs the answer is; why the intended evidence was never made available to the court at the onset or by the time the Plaintiffs' tendered their evidence and closed their case.

62. Nevertheless, despite the need and or necessity to explain the reason why the evidence was not forthcoming at the onset, the Plaintiffs have remained mute and have proffered no explanation, whatsoever. In this regard, one is left to wonder as to the reasons that led to the failure and/ or neglect to bring forth the intended evidence at the onset.

63. Suffice it to note that the failure to bring forth the evidence that now informs the intention and/or desire to re-open the Plaintiffs case, could be the result of want of diligence or deliberate inaction, which would not attract and/or accrue exercised of Equitable Discretion.

64. On the other hand, the other issue that does arise is whether the intended evidence is calculated to plug and/or fill the gaps that were evident in the Plaintiffs case, arising from and/ or discernable after the cross examination.

65. To my mind, the Intended evidence, (both oral and documentary) are certainly geared towards propping the Plaintiffs' case, upon the realization that indeed the Plaintiffs case was adversely exposed ex-post cross examination.

66. In short, I am of the considered view that an Application for re-opening of the case cannot be granted where the purpose thereof is to fill and or plug the gaps in the evidence of the claimant/Applicant. Clearly, the intended re-opening of the Plaintiffs' case herein, has no other purpose save for filling -in the gaps, which this court cannot sanction and/ or sanitize.

67. To this end, It is appropriate to take cognizance of the holding in the case of *Susan Wavinya Mutavi versus Isaac Njoroge & another* [2020] eKLR, where the Court stated as hereunder;

    a. The jurisdiction is a discretionary one and is to be exercised judiciously to ensure that the proposed re-opening of a parties case does not embarrass or prejudice the opposite party.

    b. Re-opening of the case is not intended to fill the gaps in the evidence of the applicant.

    c. There is no inordinate and unexplained delay on part of the applicant.

    d. That the evidence sought to be introduced could not have been obtained with reasonable diligence at the time of hearing of the case.

    e. That the evidence must be such that, if admitted, it would probably have an important influence on the result of the case, though it need not to be decisive.

    f. The evidence must be apparently credible, though it need not to be incontrovertible.

68. Other than the fact that the court cannot facilitate re-opening of a Party's case with a view to filling gaps, there is also the need to underscore that whenever a Party seeks to make an Application like the one beforehand, same must be filed and/or made without inordinate delay.

69. As pertains to the subject matter, it is common ground that the Plaintiffs' case was heard and closed on the July 20, 2020 and yet the subject Application was only made on the April 6, 2022.

70. Consequently, what becomes apparent and/or evident is that the Plaintiffs herein were content with their closure of their case for a whole two years before arriving at a contrary position and thus the filing of the subject application. To my mind, the Plaintiffs herein have not approached the court with due promptitude.

71. Given the lapse and passage of time from when the Plaintiffs case was heard and closed up to and including the time when the subject Application was filed, there is no gainsaying that there was inordinate delay on the part of the Plaintiffs prior to mounting and/or filling the subject application.

72. Owing to the foregoing, one would have expected the Plaintiffs to endeavor and/or explain the reasons why the subject Application was never made timeously and without undue delay.

73. Nevertheless, the Plaintiffs herein did not find it fit and/or expedient to avail and/or supply such information. Consequently, the court was left in the dark in discerning whether the lapse and/ or neglect herein, was intentional or otherwise informed by deliberate inaction..

74. Either way, it behooved the Plaintiffs/Applicants to avail and supply material before the court to warrant a finding that their failure to avail the evidence that is now sought to be relied upon, was neither as a result of negligence, intentional inaction nor otherwise.

75. Having not made any such efforts and taking into account the impugned duration prior to the mounting of the subject application, what becomes apparent is that there was truly an inordinate delay on the part of the Plaintiffs/Applicant, which delay, has not been accounted for.

76. In the premises, it is appropriate to find and hold that the extent of delay prior to the filing of the subject Application gives rise and culminates to the Application of the Doctrine of latches.

77. To buttress the application and relevance of the Doctrine of latches, it suffices to restate the observation of the court vide the case of *Joshua Ngatu versus Jane Mpinda & 3 others* [2019] eKLR, where the Court stated as hereunder;

> 37. Is this a suitable case to invoke the doctrine of laches; "equity aids the vigilant and not those who slumber on their rights". In the case of Abigael Barma Vs. Mwangi Theuri ELC No.393 of 2013, the court made reference to "Snell's Equity, 30th Edition at p 33 para 3-16 (quoting Lord Camden L.C in Smith v Clay (1767) 3 Bro. C.C. 639n. at 640n) where it was asserted that a court of equity "has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the court is passive, and does nothing."
>
> 38. In the Court of Appeal Case No.16 of 2012 Nairobi (Civil Application), reference was made to Lord Selbourne L.C. delivering the opinion of the *Privy Council in The Lindsay Petroleum Co v Hurd (1874) L.R. 5* P.C. 221 , where at page 240 it was stated thus:

> "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material...."

78. On the other hand, it is incumbent upon litigants, in this case, the Plaintiffs/Applicants to ensure that every action and/or application before the court is taken and/or made in a timely manner and not otherwise.

79. Suffice it to point out, that the requirement to act and/or approach the court on a timely manner, without undue delay, has since crystalized and attained a Constitutional backing vide Article 159 2(b) of *the Constitution* 2010.

80. On the other hand, the significance of taking the requisite action timeously and with due promptitude, has since received judicial pronouncement in various court decisions. Consequently, due diligence is therefore significant, essential and critical in the discharge and performance of any action in the course of the Due Process of the law.

81. To underscore the foregoing observation, it is appropriate to take cognizance of the Dictum of the Court of Appeal in the case of *Said Sweilem Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 others* [2015] eKLR, where the Court Of Appeal observed as hereunder;

> "Justice shall not be delayed" is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to assist the court to ensure the timely and efficient disposal of cases. The principles which are reiterated by sections 1A and 1B of the *Civil Procedure Act* are intended to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The principle cannot therefore be a panacea which heals every sore in litigation, neither is it a licence to parties to ignore or contravene the law and rules of procedure. We agree, with respect, with the learned Judge's conclusion that the suit in the High Court was not properly handled by the appellant's advocate. The court cannot be invited to turn a blind eye in the face of such inordinate delay and in the absence of sufficient explanation. Likewise it cannot be fashionable for parties to blame their advocate and disclaim that the mistakes made by their advocates, who they have themselves appointed cannot be visited upon them.

82. In the premises, it is my finding and holding that the Application is similarly negated by the Doctrine of latches, based on the inordinate lapse of time, indolence and slovenliness on the part of the Plaintiffs/Applicants.

Final Disposition:

83. Having reviewed the issues for determination and having taken into account the relevant Principles of the law, applicable in respect of amendments of pleadings, it is evident that the subject Application is not meritorious.

84. Consequently and in the premises, I come to the conclusion that the subject Application which has been made with undue and in ordinate delay, ought to be dismissed.

85. In the circumstances, the Application dated the April 6, 2022 be and is hereby Dismissed with costs to the Defendants/Respondents.

86. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JULY 2022.

OGUTTU MBOYA

JUDGE

In the presence of;

Joan- Court assistant.

Mr. Mwangi for the Plaintiffs/Applicants.

Mr. Okeyo for the Defendants/Respondents.