



**Njoroge v Karuthia (Environment & Land Case 1331 of 2007)  
[2022] KEELC 3520 (KLR) (21 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3520 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1331 OF 2007**

**LN MBUGUA, J  
JULY 21, 2022**

**BETWEEN**

**STEPHEN NDUNG’U NJOROGE ..... APPLICANT**

**AND**

**JANE WAIRIMU KARUTHIA ..... RESPONDENT**

**RULING**

1. Before me is an amended Notice of Motion Application dated 29.11.2021 where the plaintiff is seeking the following orders:
  - “i. This application be certified urgent and it be heard expeditiously.
  - ii. The Order of 28th May 2015 be set aside and this suit be reinstated.
  - ii. That the Honourable Court be pleased to issue orders of injunction restraining the Defendant by herself, her servants, agents, assignees or any persons claiming title through the Defendant or any of them from encroaching, using, creating an access way or maintaining using, trespassing on, entering upon, or in any manner whatsoever interfering with the property known as L.R. No. Nyandarua/Ndemi/2653 pending the hearing and determination of this application and the suit or further orders or this Honourable Court.
  - ii. The costs of this application be provided for.”
2. The application is supported on the grounds of the supporting Affidavit of the Applicant. He contends that the suit was dismissed on 28.5.2015 without his knowledges or the knowledge of his advocate. The applicant engaged another advocate thereafter who tried to look for the file but it could not be traced as it had been moved from the registry to the stores.



3. He contends that way back on 9.10.2006, the court had given directions for status quo to be maintained but defendant has recently embarked on cutting down trees, and has damaged the fence.
4. The applicant avers that before the dismissal order, the suit was fixed for hearing but could not take off for various reasons among them, being taken out by the court.
5. The applicant urges the court to allow the application noting that the same is unopposed.
6. Should the court proceed to allow the application seeing that the same is unopposed?. In the Supreme Court of Kenya case of *Tullow Oil PLC & 3 others v PS Ministry of Energy & 15 others* [2020] eKLR, the court had this to say in regard to an application which was not opposed;

“In other circumstances, depending on its nature, where an application is unopposed, and the Court sees merit in it, then it should be granted without much ado. Not the present Motion as the same is fraught with all manner of difficulties”.

7. Guided by the above case, the court will proceed to consider the merits of the application.
8. In the case of *James Yanga Yeswa v Bob Morgan Services Limited* [2019] eKLR, the court stated that;

“The principles that courts ought to consider in an application for reinstatement of a suit after dismissal for want of prosecution are set out elaborately in the case of *Birket v James* [1978] A.C. 297. The Court in this case stated as follows:

“... I will discern the principles which the law has developed to guide the exercise of discretion by court in an application for dismissal of suit for want of prosecution. These principles are:

1. Whether there has been inordinate delay on the part of the Plaintiffs in prosecuting the case;
2. Whether the delay is intentional, contumelious and, therefore, inexcusable;
3. Whether the delay is an abuse of the court process;
4. Whether the delay gives rise to substantial risk to fair trial or causes serious prejudice to the Defendant;
5. What prejudice will the dismissal occasion to the plaintiff;
6. Whether the plaintiff has offered a reasonable explanation for the delay;
7. Even if there has been delay, what does the interest of justice dictate: lenient exercise of discretion by the court”

9. I have perused the entire record; before and after the dismissal of the suit. The suit was filed on 11.6.2004 as per the plaint, and was dismissed 11 years therefore for want of prosecution on 28.5.2015 pursuant to issuance of the Notice to show cause. There before, the matter was last in court on 30.7.2012, a period of about 3 years. After the dismissal of the suit, the court was moved via the current application dated 29.11.2021, a period of 6 and ½ years.
10. One of the cardinal principles in our Constitution is “the expeditious delivery of justice” –see Article 159 (2) (b) of *the Constitution* of Kenya, which in effect codifies the 17<sup>th</sup> century maxim of “Justice delayed is justice denied”. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their families. That is precisely why rights to speedy trials are incorporated in law worldwide. Thus in law and in Equity, delayed



justice is abhorred. The people of Kenya have for decades cried out to the justice system to embrace the aforementioned principle of expeditious delivery of justice, and in response thereof, the Judiciary has formulated various blue print policies where the issue of speedy delivery of justice has been a key strategic area of concern.

11. In *Mwangi Jachienge & 2 others v. Mwaura Githuku* Also known as *Bernard Mwaura J & another* [2019] eKLR, the court stated that

“Where a litigant goes to sleep after filing a suit, he cannot blame his advocate for having not updated him on the position of the matter, or when the matter is dismissed because it has not been prosecuted or fixed for prosecution within one (1) year”.

12. The picture painted in the lifespan of this suit is unflattering, and it is evident that the applicant has been complacent and casual during a period of 18 years. The delay in the prosecution of the case before 28.5.2015 and the delay of 6½ years in filing the current application is prolonged, unexplained and inexcusable. This court would be promoting sloth if it was to allow the current application. In the circumstances, the application dated 29.11.2021 is dismissed with no orders as to costs, This file is marked as closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JULY 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

**King'ara for Applicant/ Plaintiff**

**Court Assistant: Joan**

