



Mumbi & 2 others (Suing in their Capacity as Trustees of Happy Mothers Self Help Group) v Kiarie & 2 others (Suing in their Capacities as the Administrators of the Estate of Jacinta Njeri Kiarie) (Environment & Land Case 736 of 2016) [2022] KEELC 13275 (KLR) (30 September 2022) (Ruling)

Neutral citation: [2022] KEELC 13275 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 736 OF 2016
LN MBUGUA, J
SEPTEMBER 30, 2022**

BETWEEN

**ELIZABETH MUMBI 1ST PLAINTIFF
TERESA MUTHONI MWANGI 2ND PLAINTIFF
LOISE NYAMBURA MAINA 3RD PLAINTIFF
SUING IN THEIR CAPACITY AS TRUSTEES OF HAPPY MOTHERS SELF
HELP GROUP**

AND

**ANN KARIRI KIARIE 1ST DEFENDANT
GRACE NYAMBURA KIARIE 2ND DEFENDANT
GEORGE NJAU KIARIE 3RD DEFENDANT
SUING IN THEIR CAPACITIES AS THE ADMINISTRATORS OF THE ESTATE
OF JACINTA NJERI KIARIE**

RULING

1. Before me is a notice of motion application dated May 16, 2022 where the plaintiffs/applicants are seeking the following orders:
 - i. That this application be certified as urgent and service upon the respondents be dispensed with in the first instance.
 - ii. That this honourable court be pleased to grant leave to the firm of Momanyi Magare And Company Advocates to come on record for the plaintiffs /



applicants who were previously represented by the firm of TT Nganga & Associates Advocates Nairobi

- ii. That this honorable court be pleased to reinstate this suit.
- ii. That the costs of this application be in the cause.

2. The grounds in support of the application are:

- a. That this matter was dismissed on June 2, 2021 for non-attendance.
- b. That the Secretary of our Self help Group by the name of Elizabeth Mumbi who was in charge of handling the matter on behalf of the self help group died on January 4, 2021 without notifying us of when the matter was scheduled for hearing.
- c. That the previous applicants firm of Advocates by the name TT Nganga & Associates Advocates never contacted any of our members to notifying us that case was coming up for hearing on June 2, 2021.
- d. That the Secretary of our Self help Group by the name of Elizabeth Mumbi was the only contact person that the above said firm had and she passed away on 4th January, 2021.
- e. That failure of the applicants to prosecute the matter was not deliberate as they were not aware that the same was coming up for hearing on June 2, 2021 as our Advocates at the time did not notify us of the same.

3. One Loise Nyambura Maina has also filed a supporting affidavit where she identifies herself as a member of the plaintiff (the self help-group). She has reiterated the grounds set out in the application adding that failure to prosecute the suit was not deliberate as the same was beyond their control.

4. I have considered the application, the supporting affidavit and the record and the main issue falling for determination is whether this suit should be reinstated. The court shall also consider whether the applicants deserve to have a new advocate.

5. It is trite law that the responsibility to prosecute a suit, rests on the shoulders of litigants and not their advocates. This was clearly articulated by Angote J in *Mwangi Gachiengu & 2 Others -Vs- Mwaura Gitbuku & Another-(2019) eKLR* in the following words:

“It is trite law that a matter once filed in court does not belong to the advocate but to the litigant. It is the responsibility of the litigant to be in constant touch with his advocate on the position of the matter. 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 year.”

6. The applicants contend that one Elizabeth Mumbi passed on on January 4, 2021 and she is the one who was in charge of the case. However the suit papers indicates that the suit was brought forth by trustees of the Self Help Group including Teresa Muthoni Mwangi. The trustees therefore had collective responsibility to prosecute the case and are therefore estopped from laying blame at the door of their previous advocates.

7. Another point of consideration relates to the conduct of this suit before the date of June 2, 2021 which depicts a sloppy state of affairs. The suit was filed on June 30, 2016 and almost three years later,



nothing had happened, not even service of summons. Thus on February 26, 2019, this court (Judge Eboso sitting) gave strict directions to the effect that summons to enter appearance were to be served via substituted service within 60 days failure to which the suit was to stand as dismissed and the matter was to be mentioned on July 24, 2019. Come the said date of July 24, 2019 and the plaintiff's advocate was seeking further extension of time to serve summons to enter appearance. In view of the self executing orders given earlier, the suit was marked as dismissed.

8. *Vide* an application dated September 4, 2019, the plaintiffs sought to have the suit reinstated as well as an order to extend summons to enter appearance. In a ruling dated February 10, 2020, the court indulged the applicants stating thus;

“I will reluctantly reinstate the suit and I direct the plaintiff to comply with the order of February 26, 2019 within 60 days from today. In default, the suit shall stand dismissed for non-compliance....”

9. Again there was no compliance with the aforementioned directions and a year of inaction later prompted the court to issue a notice to show cause, leading to the dismissal of the suit a second time on March 8, 2021.
10. The plaintiffs were back in court with another application dated April 21, 2021 for reinstatement of the suit. The application was listed for hearing on June 2, 2021 when it was dismissed for want of prosecution.
11. It is crystal clear that this suit was not dismissed on June 2, 2021 as alleged by the applicants. The suit was none existent even prior to the orders of the notice to show cause given on March 8, 2021 since the ruling of February 10, 2020 was self executing, such that the suit was to stand as dismissed after 60 days thereof in the event of non-compliance with the court orders. Thus by April 11, 2020 or thereabout, there was no suit.
12. In the case of *Fran Investments Limited vs G4S Security Services Limited [2015] eKLR*, it was stated that:

“The delay has not been satisfactorily explained and is a source of prejudice to the respondent as well as to the fair administration of justice. These are sufficient reasons to refuse to reinstate a suit and let it lie in peace in judicial grave”.

13. 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 17th 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.
14. The facts of this case do not warrant this court to exercise its discretion in favour of the plaintiffs. In the circumstances, the prayer to have the suit reinstated is declined. However, prayer no 2; for the firm of Momanyi Magare to come on record for the plaintiffs is allowed with no orders as to costs. This file is marked as closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA



JUDGE

In the presence of:-

Momanyi for the plaintiffs/applicant

Court Assistant: Joan

