



REPUBLIC OF KENYA



KENYA LAW
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**Cheruiyot & another v Mwei & 3 others (Environment & Land Case 95 & 68 of 2017
(Consolidated)) [2022] KEELC 14447 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14447 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 95 & 68 OF 2017 (CONSOLIDATED)
MC OUNDO, J
OCTOBER 27, 2022**

BETWEEN

GEOFFREY KIPLANGAT CHERUIYOT 1ST PLAINTIFF

JACQUILINE CHEPKURUI SOI 2ND PLAINTIFF

AND

KIPKORIR ARAP MWEI 1ST DEFENDANT

RICHARD KIPKEMOI SIGEI 2ND DEFENDANT

LAND REGISTRAR BOMET COUNTY 3RD DEFENDANT

SAMWEL KIPROP SIGEI 4TH DEFENDANT

RULING

1. Before me for determination is an Application dated the 10th May 2022 filed by the 1st, 2nd, and 4th Defendants/Applicants herein pursuant to the provisions of Order 17 Rule 2(1) (2) & (3), Order 50, Order 51 Rule 1 of the *Civil Procedure Rules*, Section 1A, 1B, 3 and 3A of the *Civil Procedure Act* wherein they seek for the dismissal of the suit herein for want of prosecution. The application was supported by the grounds therein as well as by a supporting affidavit of Richard Kipkemoi SigEI, the 2nd Defendant/ Applicant herein sworn on 10th May 2022.
2. The Applicants' assertion was that since the suits were consolidated and a ruling delivered on the 3rd March 2020, there has never been any attempt by the Plaintiffs/Respondents to have the matter set down for hearing two (2) years down the line.
3. In response to the said application, the Respondents, through a Replying Affidavit sworn on 20th June 2022 by one Simeon Kipkemoi Sigilai, who is a Plaintiff in suit No 68/2017, deponed that although the Applicants' claim was to the effect that the matter had not been prosecuted since 3rd March 2020, that the court ought to take cognizance of three issues before the matter could be condemned.



4. First that the year 2020 had largely been affected by the Covid-19 pandemic wherein courts had been closed, that after the Covid-19 pandemic had subsided, the court had been condemned and closed down. That this matters were out of their control, and the court should indulge them and allow them to prosecute the matter.
5. That secondly, this matter was tied up with Succession Cause No.206/2015 which was pending before the Bomet High court, wherein the Grant of Letters of Administration upon which the Applicants sought to rely on in their defence in the current suit, had been challenged. That it would therefore not be in the best interest of justice to dismiss the suit, but to stay the same all together pending the outcome of the Succession Cause herein above stated.
6. That the Applicants had not demonstrated sufficient reasons as to why this matter ought to be dismissed keeping in mind that the factors that occasioned the unfortunate delay were justifiable and in the realm of justice. The Respondent's sought that the application be dismissed with costs.
7. On the 27th June 2022 there were directions taken to the effect that the said application be disposed of by way of written submissions which were to be filed within 14 days. Only the Respondents had complied. The Applicants have now filed their submissions dated the 11th October 2022 on the 21st October 2022 which was way out of time and without leave of the court.
8. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that an Applicant who fails to file their submissions on an application as ordered by the court is deemed as a party who has failed to prosecute his application and therefor that application is liable for dismissal. The filing of submissions having been ordered by the court, the failure by the Applicants to exercise the leave granted to them to file written submissions within the stipulated period clearly demonstrates inertia and inordinate delay, lack of interest and/or seriousness on their part in the prosecution of their Application.
9. The Court of Appeal in *Rowlands Ndegwa and 4 Others v County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another (Interested Parties)* [2020] eKLR, citing with approval the decision of the High Court in, *Winnie Wanjiku Mwai v Attorney General & 3 others* [2016] eKLR, observed as follows:

“With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited if there should be a delay in the prosecution of the action and the respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity...”
10. The mode of hearing having been directed by the court and received by the Applicant, and there having been no compliance, I am persuaded to dismiss the application dated the 10th May 2022, which I now do, with costs.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT KERICHO THIS 27TH DAY OF OCTOBER 2022.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

