



Muthuri v Mikumbune Farmers Project aka Mikumbune/Kathangari Farmers Project (Suing through the Chairman Daniel Mburugu) (Environment and Land Appeal E001 of 2023) [2025] KEELC 3080 (KLR) (2 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3080 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL E001 OF 2023**

**LN MBUGUA, J
APRIL 2, 2025**

BETWEEN

PETER MUTHURI APPELLANT

AND

**MIKUMBUNE FARMERS PROJECT AKA MIKUMBUNE/KATHANGARI FARMERS PROJECT RESPONDENT
SUING THROUGH THE CHAIRMAN DANIEL MBURUGU**

(Being an appeal from the ruling and consequential orders of the Chief Magistrate Hon. Kithinji A.R (CM) Nanyuki Law Courts delivered and dated 25.1.2023 (Nanyuki CM ELC No. 15/2019 (Peter Muthuri v Mikumbune Farmers Project aka Mikumbune/Kithangari Farmers Project Suing through chairman Daniel Mburugu)

JUDGMENT

1. The appellant's suit before the trial court was dismissed on 15.6.2022 for want of prosecution. He therefore filed an application dated 21.9.2022 seeking for the reinstatement of the suit, and in a ruling delivered on 25.1.2023, the said application was dismissed triggering this appeal.
2. In the memorandum of appeal dated 8.2.2023, the appellant raised the following 7 grounds;
 - a. That the Learned Magistrate erred in law and fact in failing to acknowledge that the appellant had a firm of advocates representing him on record and no service of notice to show cause was ever served upon the appellant's advocates.
 - b. That the Learned magistrate erred in law and fact when he failed to observe that the appellant had fully complied with law in relation to compliance and as such he was not the hindrance towards the prosecution of his case to its logical conclusion.



- c. That the Learned Magistrate erred in law and fact when he averred that the appellant was served personally when indeed the notice to show cause was sent via posta and the same was not registered hence occasioning miscarriage of justice upon the appellant.
 - d. That the Learned Magistrate erred in law and fact in finding that no action had been taken in prosecution which assertion is not backed by any evidence yet there were many intervening factors like Covid 19 when the courts countrywide closed down.
 - e. That the Learned Magistrate erred in law and fact when he dismissed the matter by dint of the appellant not stating the duration he shall take to prosecute and conclude the matter yet he is not the only link in prosecuting matters filed in court.
 - f. That the Learned Magistrate erred in law and fact when he dismissed the entire suit and wholly laid the blame on the appellant as if the appellant was the only cog towards determination of the matter at hand.
 - g. That the Learned Magistrate erred in law and fact, when he failed to holistically consider the issues raised in court and framing different issues from the issues set down during trial.
3. On 7.10.2024, the court gave directions for the appeal to be heard by way of written submissions. I have duly considered the submissions of the appellant dated 7.10.2024 as well as those of the respondent dated 5.12.2024. It is quite apparent that the suit before the trial court was filed on 1.3.2019 and no steps were taken to prosecute the same in the next 3 or so years and was eventually dismissed on 15.6.2022.
 4. In *Fran Investments Limited v G4S Security Services Limited* [2015] KEHC 8153 (KLR), a case cited by the respondent, it was stated that;

“Order 17 Rule 2 (1) of the Civil Procedure Rules does not require service of notice; it uses the word ‘give notice’. The court may give notice of dismissal through its official website or through the cause-list. And those mediums will constitute sufficient notice for purposes of Order 17 Rule 2 (1) of the Civil Procedure Rules”
 5. The notice to show cause was duly given as observed by the trial court in its ruling of 25.1.2023.
 6. In *Mwangi S. Kimenyi v Attorney General & another* [2014] KEHC 4220 (KLR), it was held that;

“I admit that a party should always take steps to progress his case to logical conclusion. That is a requirement of justice and the overriding objective in assisting the court to attain expeditious and just disposal of cases which follows after the long standing adage; justice delayed is justice denied”
 7. It is noted that in his application dated 21.9.2022, the appellant never offered any explanation for the delay in prosecution of the case save to state that he had duly instructed an advocate.
 8. In *Mwangi Jachiengi & 2 others v. Mwaura Githuku Calso 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”.
 9. Thus nothing turns on blaming the advocate on record.



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 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, and also affects the overall administration of justice by clogging the justice system.
11. In the final analysis, I find that the appeal is not merited, the same is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 2ND DAY OF APRIL 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

