



Ngeno & 2 others v Ngeno & another (Environment and Land Appeal E002 of 2021) [2022] KEELC 13543 (KLR) (13 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13543 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND APPEAL E002 OF 2021
MC OUNDO, J
OCTOBER 13, 2022**

BETWEEN

**PHILEMON NGENO 1ST APPELLANT
ESTHER CHUMO 2ND APPELLANT
BERNARD NGENO 3RD APPELLANT**

AND

**PICOTY CHEPKOECH NGENO 1ST RESPONDENT
NGENO RONALD KIBET 2ND RESPONDENT**

RULING

1. Before me for determination is the Notice of Motion dated March 7, 2022 brought under the provisions of Sections 3A and 63(e) of the *Civil Procedure Act*, Order 50 Rule 1 and 2, Order 42 Rule 6 and Order 51 of the *Civil Procedure Rules* and all other enabling provisions of the law where the Appellants/Applicants seeks for orders to set aside the orders of the Chief Magistrate, honorable E.K Makori, (as he then was) that had denied them stay of execution in Kericho CMCC 41 of 2018 and thereafter grant them the order of stay of execution, pending the hearing and determination of their intended Appeal.
2. The application is premised on the grounds thereto and on the 3rd Applicant's Supporting Affidavit dated the March 7, 2022, as well as a further affidavit by their Counsel dated the July 15, 2022.
3. The Application was opposed by the 2nd Respondent in her Replying Affidavit sworn on May 11, 2022 as well as her written submissions of an equal date which was filed on May 12, 2022. On the May 17, 2022, orders were issued to the effect that there be service of the Replying Affidavit and written submissions upon the Applicant within seven days pursuant to which the Applicants were to file their submissions 14 days upon service. The matter was set for mention for confirmation of compliance for



July 18, 2022 on which date the court was informed that parties had complied wherein a date for ruling was scheduled.

4. As I write this ruling, I note that only the Respondents had complied and filed their submissions on the May 12, 2022. the Applicants/Appellants did not comply with the orders of the court to file their written submissions. 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 his 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.
5. The filing of submissions having been ordered, and this court having extended time for compliance without compliance, the failure by the Applicant to exercise the leave granted to them to file written submissions clearly demonstrates inertia and inordinate delay, lack of interest and/or seriousness on their part, in the prosecution of the matter.
6. 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...”
7. The mode of hearing having been communicated to the parties and the Applicant having consented to the same and there having been no compliance, I am persuaded to dismiss the main motion, which I now do, with costs.

It is so ordered.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 13TH DAY OF OCTOBER 2022

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

