



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nkoitiko (Suing as administratrix of the Estate of Mutae Ene Nkoitiko  
(Deceased)) v Mangori & 2 others (Environment & Land Case  
530 of 2017) [2022] KEELC 15071 (KLR) (22 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15071 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 530 OF 2017  
MN GICHERU, J  
NOVEMBER 22, 2022**

**BETWEEN**

**HELLEN NYOTE NKOITIKO ..... PLAINTIFF  
SUING AS ADMINSTRATRIX OF THE ESTATE OF MUTAE ENE NKOITIKO  
(DECEASED)**

**AND**

**KIMANKUSI OLE SETOYA MANGORI ..... 1<sup>ST</sup> DEFENDANT  
DISTRICT LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> DEFENDANT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is on the application dated December 15, 2021 which seeks to set aside the proceedings of December 7, 2021 together with any other consequential orders.  
Secondly, the plaintiff seeks leave to file additional documents in her list of exhibits.
2. The application which is under sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, order 12, rule 7, *Civil Procedure Rules* and all enabling provisions of law is premised on sixteen grounds, a supporting affidavit and four annexures.
3. The sum total of the above material is that the plaintiff could not proceed on the hearing date because there are two other suits over the same subject matter which are ELC 530/2017 at Kajiado and Succession Cause Number 62/2016.
4. The application by the plaintiff is opposed by the first defendant who has filed four grounds of opposition and an affidavit both of which are dated April 26, 2022. Annexed to the affidavit are two



letters dated February 8, 2021 and December 3, 2021 by the plaintiff's counsel seeking to put off the matter.

5. Counsel for the parties filed written submissions on May 13, 2022 and August 30, 2022. I have carefully considered the application dated December 15, 2021 in its entirety including the affidavits, grounds, annexures, submissions and the case law cited therein. I have also considered the entire record from December 2013 when this case was filed. I find that it has no merit for the following reasons.
6. Firstly, it is the plaintiff's counsel who took the hearing date of December 12, 2021. This was on May 19, 2021. The plaintiff cannot be heard to raise all the grounds that she has raised when she is the one who took the date. If she was aware of all this lack of preparedness, why did she take the date?
7. Secondly, section 1A of the Civil Procedure Act under which the application is brought provides at subsection 1 as follows.

"The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by the Act".

It defeats the overriding objecting of the Civil Procedure Act and rules to delay an old case.

8. Thirdly, it is very surprising for the plaintiff to admit that there is indeed a related suit which is ELC 530/2017 Kajiado over the same subject matter. Why would there be two suits over the same subject matter when order 4 rule 1(f) of the Civil Procedure Rules forbid this? It provides as follows.

The plaint shall contain the following particulars

- (f) an averment that there is no other suit pending, and that there have been no previous proceedings, in any court between the Plaintiff and the Defendant over the same subject matter and that the cause of action relates to the Plaintiff named in the plaint".

9. Fourthly, the affidavit dated December 15, 2021 in support of current application devoted most of its content to what happened on December 7, 2021 instead of advancing convincing reasons why an old matter like this did not proceed and why the plaintiff deserves the court's discretion to be heard.
10. Fifthly, it is show of lethargy in the prosecution of her case for the plaintiff to tell the court that more than eight years down the line, she wished to file additional evidence in a case that was filed under certificate and which should have been concluded by now had she been interested in its expeditious disposal.
11. Finally, the court was kind enough on December 7, 2021 not to dismiss the plaintiff's case and to deem her case as duly closed which means that her evidence on record would be considered in the final determination.
12. For the above reasons, I dismiss the application dated December 15, 2021 with costs to the first defendant.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2022.**

**M N GICHERU**

**JUDGE**

