



**Wangari v Mbuthia & 2 others (Environment and Land Appeal  
143 of 2019) [2022] KEELC 15492 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15492 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL 143 OF 2019**

**JG KEMEI, J**

**DECEMBER 19, 2022**

**BETWEEN**

**JANE WANJIRU WANGARI ..... PLAINTIFF**

**AND**

**PAUL GACHUKI MBUTHIA ..... 1<sup>ST</sup> DEFENDANT**

**REGISTRAR OF LANDS THIKA DISTRICT ..... 2<sup>ND</sup> DEFENDANT**

**GITHUNGURI CONSTITUENCY RANCHING CO LIMITED .... 3<sup>RD</sup>  
DEFENDANT**

**RULING**

1. The 1<sup>st</sup> defendant/applicant filed the instant motion dated July 20, 2021 seeking orders that;
  - a. The suit be dismissed for want of prosecution.
  - b. Costs of this application and of the entire suit be met by the plaintiff.
2. The application is based on the grounds thereat and supporting affidavit of Paul Gachuki Mbuthia the 1<sup>st</sup> defendant/applicant. He deponed that the plaintiff has not taken any steps to fix the matter for hearing and or has lost interest in the suit and is only out to frustrate the 1<sup>st</sup> defendant by filing suit that she is not keen to prosecute. There has been inordinate delay in prosecuting the matter for the last three years given that pleadings closed and the matter is yet to go for pretrial conference. The applicant urged the court to dismiss the suit.
3. There is no evidence on record to show that the plaintiff filed a response to the application despite the undertaking by his advocate Mr Nyamweya having sought and obtained leave of the court to file a response within 7 days from the October 13, 2022.



4. Despite directions having been taken none of the parties have filed written submissions. I shall determine the application based on the record.
5. The application is brought under order 17 rule 2(3) *Civil Procedure Rules* which provides that;
  - “2. Notice to show cause why suit should not be dismissed [order 17, rule 2] (1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.
  - (2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
  - (3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.
  - (4) The court may dismiss the suit for non-compliance with any direction given under this order.
  - (5) A suit stands dismissed after two years where no step has been undertaken.
  - (6) A party may apply to court after dismissal of a suit under this order.”
6. I note from the record that the suit was filed on the August 14, 2019 and the 1<sup>st</sup> defendant filed his defence on the October 8, 2019 hence the closure of pleadings. Thereafter the plaintiff wrote to the deputy registrar on the December 2, 2020 seeking a date for pretrial. Nothing took place until the court issued a notice to show cause on the July 8, 2021 in which the plaintiff responded and intimated her willingness and readiness to prosecute her case.
7. Cognizant of the right to be heard, there is every reason to grant the application to dismiss the suit for want of prosecution given the apparent slow action of the plaintiff to expedite the hearing of the case. However I shall indulge the plaintiff so that she may have her day in court purely in the interest of justice but on condition that the plaintiff pays throw away costs of Kshs 20,000/- to the defendants.
8. In the end I direct the plaintiff to fix the matter for pretrial and eventual hearing within a period of 30 days in default this suit shall stand dismissed with no further orders from the court.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 19<sup>TH</sup> DAY OF DECEMBER, 2022 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Plaintiff – Absent

Njonjo for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

3<sup>rd</sup> Defendant - Absent

**Court Assistant – Phyllis / Kevin**

