



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rutoh v Somra & 3 others (Environment & Land Case 524 of 2017)  
[2022] KEELC 15616 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15616 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 524 OF 2017  
LN MBUGUA, J  
DECEMBER 7, 2022**

**BETWEEN**

**EMILY CHEPNGENO RUTOH ..... PLAINTIFF**

**AND**

**RAVINE SOHAL SOMRA ..... 1<sup>ST</sup> DEFENDANT**

**GREENSTONE APARTMENTS MANAGEMENT COMPANY LIMITED .... 2<sup>ND</sup>  
DEFENDANT**

**LAND REGISTRAR NAIROBI ..... 3<sup>RD</sup> DEFENDANT**

**GOVINDA CHEETAH ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is a notice of motion application dated July 6, 2022 where the plaintiff seeks orders for the reinstatement of the suit, which was dismissed on May 26, 2020. The applicant contends that the suit is crucial as it involves the plaintiff's property apartment No C9 erected on LR No 330/1256 which was fraudulently sold to 4<sup>th</sup> defendant who never completed payment of the purchase price. It is further contented that the applicant stands to suffer irreparable loss and damage if the orders are not granted.
2. The defendants have not filed responses to the application hence the same is unopposed. Nevertheless, the court is duty bound to determine the merits of the application. In the case of *Gideon Sitelu Kanchella v Julius Lekakeny ole Sukwi & 2 others [2018] eKLR*, the court stated that:

“As a court of law we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a matter of course grant the sought orders.”



3. It is trite law that the responsibility to prosecute a suit, rests on the shoulders of a litigant and not her advocate. This was clearly articulated by Angote J in *Mwangi Gachiengu & 2 Others v Mwaura Gitbuku & Another [2019] eKLR* in the following words:

“it is trite law that a matter once filed in court does not belong to the advocate but to the litigant. It is the responsibility of the litigant to be in constant touch with his advocate on the position of the matter. 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 year.”

4. The history of this matter depicts a case of complacency. The suit was filed way back on August 11, 2017 contemporaneously with an application for injunction. On June 25, 2018, the court gave directions for the aforementioned application to be amended and served as a new party was being mentioned in the proceedings. That amended notice of motion (dated October 4, 2018) was not prosecuted and was eventually dismissed on January 29, 2019.
5. Thereafter, the matter was mentioned severally before the deputy registrar on June 11, 2019, July 3, 2019, August 12, 2019, September 12, 2019 and on February 12, 2020 a notice to show cause as to why the suit should not be dismissed was issued. The suit was eventually dismissed on February 26, 2020.
6. After the dismissal it took the applicant another two years to file the current application.
7. In the case of *Fran Investments Limited v G4S Security Services Limited [2015] eKLR*, the court held that:

“The delay has not been satisfactorily explained and is a source of prejudice to the Respondent as well as to the fair administration of justice. These are sufficient reasons to refuse to reinstate a suit and let it lie in peace in judicial grave. The amount of time which has passed by will not allow any and is not conducive to having a fair trial in this matter.”

8. Likewise in the present case, the delay has not been satisfactorily explained. The application dated July 6, 2022 is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N MBUGUA**

**JUDGE**

In the presence of:-

Morara for plaintiff

Mochoge holding brief for M/s Netia for 1<sup>st</sup> & 4<sup>th</sup> defendants

Court Assistant: Eddel/Vanilla

