



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 1351 OF 1980**

**MIRIAM GACHOKI KIARIE.....APPLICANT**

**VERSUS**

**ATTORNEY-GENERAL.....1<sup>ST</sup> RESPONDENT**

**WAWERU RANJA.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**WILLIAM WAITUIKA KIHURIA.....3<sup>RD</sup> DEFENDANT**

**RULING**

The second Defendant made an application by Notice of Motion under Order XVI, rules 5 and 6 of the Civil Procedure Rules, dated 15<sup>th</sup> October, 2003 and filed on 16<sup>th</sup> October, 2003. The application has two prayers:

- (i) that the suit be dismissed for want of prosecution;
- (ii) that costs of the suit and of this application be awarded to the second Defendant.

The grounds stated on the face of the Notice of Motion are as follows:

- (i) the suit, which relates to a land dispute, was filed 23 years ago and the Plaintiff has not taken any serious steps to prosecute it;
- (ii) owing to the dilatoriness in prosecuting the case, the Defendant's family has suffered and continues to suffer as it cannot deal with the suit land which is duly registered in the Defendant's name;
- (iii) the original parties to the Plaintiff's suit are long dead.

The application is supported by the affidavit of David Ranja Waweru, sworn on 15<sup>th</sup> October, 2003 and filed on 16<sup>th</sup> October, 2003. The deponent avers, so far as is most material for the determination of this application, as follows:

- (a) He is the eldest son and the legal representative of the estate of Waweru Ranja (deceased) the second Defendant. By Orders made by the Honourable Mr. Justice Mbiti on 2<sup>nd</sup> October, 2003 the deponent was substituted for the deceased, in the suit.
- (b) The suit was filed on 19<sup>th</sup> May, 1980. It is now 23 years since then; but the Plaintiff has shown no

interest in prosecuting the case to its conclusion.

(c) The suit had been filed by the present Plaintiff's husband who had died in 1998.

(d) The matter concerns a land dispute, in respect of the ownership of the parcel of land known as L.R. No. NGENDA/GITHUNGUCU/698.

(e) The suit property is registered in the name of the deceased second Defendant who had purchased it in 1977 from the third Defendant (copy of the Land Certificate marked "DRW1" attached).

(f) The Plaintiff seeks in the suit to have the Land Register rectified and a declaration issued that he is the lawful owner of the suit property, on the alleged grounds that he had purchased it from the third Defendant's mother.

(g) At the time of filing the suit the Plaintiff had obtained an injunction restraining the second Defendant from interfering or dealing with the suit property until the determination of the suit.

(h) Before obtaining the injunction, the Plaintiff had lodged a caveat on the suit property, which is still known to be subsisting.

(i) The deaths of the original parties has undermined the foundation of the claims made in the suit, and it is not clear that the case now has the necessary momentum to move it ahead to a just conclusion.

(j) The prospects for a successful prosecution of the case are further undermined by the fact that the Plaintiff's Advocate on record has not held a practising certificate since 1993 (Law Society letter marked "DRW2" attached).

(k) In the circumstances, the continued maintenance of the suit serves no useful purpose; and its only effect is to block the family of the second Defendant from dealing with its lawfully registered land, on the strength of the Plaintiff's caveat and injunction.

On file there are affidavits of service by Herbert Asudi Luke, one dated 17<sup>th</sup> December, 2003, filed on 18<sup>th</sup> December, 2003; the other dated 26<sup>th</sup> February, 2004 and filed the same day. In the two affidavits it is deponed that service of the hearing notice for the Notice of Motion application dated 15<sup>th</sup> October, 2003 was duly effected on

(i) the Attorney-General;

(ii) the first Defendant;

(iii) M/s. Njenga Muchira & Co. Advocates (for the Plaintiff); and

(iv) William Kihuria, the third Defendant.

However, only counsel for the first Defendant, Mr. Makongo, and for the second Defendant, Mr. Wananda attended at the hearing which took place on 1<sup>st</sup> March, 2004.

Both counsel were in agreement, in their submissions, that it was just and equitable that the suit be dismissed for want of prosecution. Mr. Wananda made submissions based on the facts as set out in the affidavit of David Ranja Waweru, and prayed for the dismissal of the suit.

After reading the documents on file, and considering the prayers in the application on the merits, taking into account the evidence set out in the affidavit and the submissions of counsel, I am inclined to hold that the continuation of the suit as a charge upon the Court's time and attention, is no longer acceptable, and would indeed constitute an abuse of the judicial process. It is not permissible that parties should file suits

without the intent to prosecute them and have the Court pronounce a final verdict upon them. Dispute within the community resulting in judicial resolution, is a constant process; and to properly perform this social function, the Court is under duty to conduct such good case-management as would allow it to have its services available for in-coming disputes. The Courts ought not, therefore, to be subjected to the inconvenience of having their hands clogged by dead cases that have no momentum to move them under the initiative of a diligent Plaintiff. It goes against the principles of good case- management to allow the present suit to stay, and accordingly I dismiss it as prayed, and also make the following Orders:

1. Upon the dismissal of the suit, the second Defendant is set at liberty to make use of his land, L.R. No. NGENDA/GITHUNGUCU/698 in the fullest possible manner as the sole proprietor.
2. With effect from the date of this Ruling, all Orders previously made regarding the suit property, L.R. No. NGENDA/GITHUNGUCU/698, and in particular all such injunctions or caveats as may still be attaching to the said property, are set aside and shall be expunged from the land records held by the Land Registry.
3. The Plaintiff shall pay the costs of both the first and the second Defendants in this application.
4. The Plaintiff shall pay the costs of the Defendants in this suit.

DATED and DELIVERED at Nairobi this 12<sup>th</sup> day of March, 2004.

**J.B. OJWANG**

**Ag. JUDGE**

**Coram: Ojwang, Ag. J.**

**Court clerk: Mwangi**

**For the first Defendant: Mr. Makongo, instructed by the Attorney-General**

**For the second Defendant/Applicant: Mr. Wananda, instructed by M/s. Shapley Barret & Co. Advocates.**

**Plaintiff unrepresented.**

**Third Defendant unrepresented.**