



**Seii v Githaiga & 3 others (Enviromental and Land Originating Summons
300 of 2012) [2025] KEELC 1037 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1037 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 300 OF 2012
OA ANGOTE, J
MARCH 6, 2025**

BETWEEN

JEPCHIRCHIR TERIKI SEII APPLICANT

AND

MEDAD NGUNJIRI GITHAIGA 1ST RESPONDENT

JOSEPH WAMBUGU GITHAIGA 2ND RESPONDENT

HELLEN WANGUI GITHAIGA 3RD RESPONDENT

THE LAND REGISTRAR NAIROBI 4TH RESPONDENT

RULING

1. Before this court for determination is a Notice of Motion application dated 29th May 2024 filed by the Applicant pursuant to the inherent powers and jurisdiction of the court and Article 159 of [the Constitution](#) of Kenya. The Applicant seeks the following orders:
 - i. This Honourable court be pleased to make an order setting aside the dismissal orders given on 29th May 2024 and reinstate the Further Amended Originating Summons amended on 9th April 2018 and have the same heard on merits.
 - ii. This Honourable Court be pleased to make order reinstating the Further Amended Originating Summons amended on 9th April 2018 and have the same heard on merits.
 - iii. This Honourable Court be pleased to make orders reinstating the status quo orders confirmed on 28/2/2022.
 - iv. This Honourable Court be pleased to direct that the orders given on 21st September 2023 requiring the 4th Respondent (the Land Registrar Nairobi) to file in Court the Land Titles



for Land Reference Numbers L.R. 5948/14 and L.R. 5948/16 and release to the Applicant/ applicant immediately be and are hereby be reinstated.

- v. Costs be in the cause.
2. This application is supported by the affidavit sworn by the Applicant, Jepchirchir Teriki Seii, who deponed that this suit revolves around the question of whether the Applicant and the 2nd Respondent jointly own LR 5948/14 or LR 5948/16, which titles are registered in the name of the 1st Respondent and are in the custody of the Land Registrar Nairobi, and that she is currently in occupation of the suit property together with the child of the marriage and will be evicted anytime since the suit has just been dismissed for want of prosecution and the status quo orders have been vacated.
 3. The Applicant asserts that her advocates duly served the 4th Respondent with the court orders given on 21st September 2023 which required the Land Registrar to file in Court the titles for Land Reference Numbers LR 5948/14 and LR 5948/16.
 4. However, it was deposed, it was through a letter dated 28th May 2024 that the 4th Respondent indicated that they did not have copies of those titles; that when the matter came up for hearing on 29th May 2024, the Advocate indicated to the court that since the 4th Respondent had not filed the land titles in court, despite service of the court orders, the matter could not proceed and that the court thereupon dismissed the case for want of prosecution.
 5. According to the Applicant, in the affidavit sworn by Medad Ngunjiri Githaiga on 22nd September 2014, at paragraph 5, he disputed the land reference number 5948/14 and provided a different number being 5948/16, necessitating the orders of 21st September 2023 which were duly served upon the 4th Respondent.
 6. The Applicant pleads that the doors of justice should not be shut on her; that if this application is allowed, it will assist the court in the determination of the real issues in controversy between the parties and dispense with the case timeously and conclusively and that no prejudice will be suffered by the Respondents if the orders are granted.
 7. The application was opposed by the 2nd Respondent through a Replying Affidavit sworn by the 2nd Respondent, who deponed that the Originating Summons application was filed on 29th April 2012 under Certificate of Urgency and the Applicant secured interim injunctive orders in the suit and that the Respondents duly filed responses on 10th June 2012 in opposition.
 8. He contends that the Applicant had no intention of prosecuting the Originating Summons and continued to file one application after the other; that the Applicant has the habit of changing advocates at crucial moments in order to buy time as the new advocates always sought time to familiarize themselves with the suit papers and that in the last ten years, the Applicant has changed advocates seven times.
 9. According to the 2nd Respondent, the suit was set down for hearing on 29th May 2024 by consent of all parties; that on 29th May 2024, the court directed that the matter should proceed considering the previous directions and the age of the matter; that the Applicant's Advocates however informed the court that they were not ready to proceed on the same date and that the court therefor made a determination and dismissed the suit.
 10. The 2nd Respondent argues that from 21st September 2023 when the 4th Respondent was enjoined, the Applicant had sufficient time to secure any document required and the delay in pursuing



whatever document that was needed was deliberate and willful, with the sole intention of delaying the expeditious conclusion of this old matter.

11. It was deposed by the 2nd Respondent that the Applicant failed to comply with the orders of the court by not preparing the documents necessary for the prosecution of this suit and cannot hold this court at a ransom forever as justice delayed is justice denied.
12. The 2nd Respondent deposed that they are greatly prejudiced as the applicant has continued to unlawfully occupy their land and that the Applicant has used every trick and evasive maneuver to delay the hearing and determination of this matter.
13. The 3rd Respondent also opposed the application vide a Replying Affidavit sworn by Catherine Wangari Githaiga, the daughter and guardian of the 3rd Respondent, who is now deceased. She deposed that on 17th January 2024, this suit was set down to proceed for hearing on 29th May 2024 by the consent of all parties.
14. On the hearing date, it was deposed, the Applicant's advocates informed the court that they were not ready to proceed as the 4th Respondent was yet to furnish them and the court with copies of title documents for Land Reference Numbers 5948/14 and 5948/16 and that the court dismissed the suit for want of prosecution, referencing its orders issued on 17th January 2024 for leave to file additional documents within 30 days.
15. The 3rd Respondent asserted that reinstatement of this suit will occasion them prejudice as the core issue in this dispute is the Applicant's allegation that the suit property was given to her as a gift by the 1st and 3rd Respondents and that the 1st Defendant however passed away on 28th July 2015 while the 3rd Respondent passed away on 13th November 2023.
16. The deponent contends that as the cause of action was based on the allegation of a personal action of the two deceased Respondents, the cause of action did not survive their respective deaths; that a fair trial cannot be held in the absence of the two deceased Respondents and that viva voce evidence is indispensable for the fair trial of the issues in dispute.
17. She similarly argued that the Applicant has not been keen in prosecuting this matter and has had a habit of changing advocates and that following the court granting the Applicant leave to file any necessary documents within 30 days on 17th January 2024, the Applicant had sufficient time to secure the necessary documents and the delay in obtaining these documents was deliberate, premeditated and willful.
18. Parties filed submissions and authorities which I have considered.

Analysis and Determination

19. Upon consideration of the pleadings and submissions filed by the parties, the only issue for the determination of this court is whether this court ought to reinstate the suit and the status quo orders that were in place.
20. This application has been made pursuant to the inherent powers and jurisdiction of this court. The extent of inherent powers of the court is explained in Halsbury's Laws of England, 4th Edn. Vol. 37 Para. 14 as follows:

“The jurisdiction of the court which is comprised within the term “inherent” is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and



criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process ... In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.”

21. As held by the Court of Appeal in *Kenya Power & Lighting Company Limited vs Benzene Holdings Limited t/a Wyco Paints* [2016] KECA 73 (KLR), this inherent jurisdiction is a residual intrinsic authority which the court may resort to in order to put right that which would otherwise be an injustice.
22. In this matter, the Applicant has sought to rely on this court’s inherent jurisdiction to reinstate the suit, which was dismissed on 29th May 2024. They have also sought that the status quo orders be reinstated.
23. This suit was filed vide Originating Summons dated 29th May 2012. The Applicant’s claim was that she and the 2nd Respondent purchased LR 5948/14 from the 1st Respondent and sought for an order of specific performance for transfer of title in their favor. It is apparent that the Applicant and the 1st Respondent were previously married and the 1st Respondent is the 2nd Respondent’s father.
24. In the Supporting Affidavit dated 22nd September 2014, the 1st Respondent deponed that the land the Applicant occupied was not in fact LR No. 5948/14 but rather LR No. 5948/16. He also asserted that the suit property was owned together with his wife Helen Wangui Githaiga, who was later joined in the suit in 2018 when the Applicant amended the Originating Summons.
25. Through a ruling dated 21st September 2023, this court allowed the joinder of the Land Registrar Nairobi on application by the Applicant. The Land Registrar was further ordered to file a Replying Affidavit within 14 days of the date of the ruling and service of the Originating Summons.
26. This matter came up for mention on 17th January 2024 and Applicant’s Counsel, Mr. Jaoko, confirmed that they had served the Attorney General on 29th September 2023 but the Attorney General denied receiving any such documents. This court accordingly issued orders for the Attorney General to file her response within 14 days and for the Applicant to amend her Originating Summons within 14 days after service.
27. Parties were thereafter directed to file comprehensive witness statements and documents within thirty days and the suit was set down for hearing on 29th May 2024.
28. On the said 29th May 2024, the Applicant’s counsel informed the court that the Land Registrar had failed to file their documents and that they on their part were not ready to proceed because their documents were incomplete.
29. Counsel for the Attorney General on her part reported that her client could not trace the contested titles and could not therefore provide the titles. Mr. Mwenda for the 1st Respondent and Mr. Macharia for the 2nd Respondent were ready to proceed.



30. The court declined to adjourn the matter and dismissed the suit for want of prosecution with costs, noting that the suit was twelve years old and the dispute belonged to the Applicant.
31. The Applicant has sought the reinstatement of the suit. The Applicant has relied on the case of Patriotic Guards Ltd vs James Kipchirchir Sambu [2018] eKLR, where the Court of Appeal upheld the principle that every person has a right to be heard.
32. It was aptly stated by the court in Utalii Transport Company Limited & 3 Others vs NIC Bank & Another [2014] eKLR that it is the primary duty of the Applicants to take steps to progress their case since they are the ones who dragged the Defendants to court. Further, in the words of Sir Charles Newbold P in the case Mukisa Biscuit Co as quoted in the case of Ivita vs Kyumbu [1975] KEHC 4 (KLR):

“It is the duty of an Applicant to bring his suit to early trial, and he cannot absolve himself of this primary duty by saying that the defendant consented to the position.”
33. The Applicant has not presented any just cause for her failure to prosecute the suit. The Applicant has not presented any correspondence urging the 4th Respondent to present them with the impugned report.
34. Contrary to the Applicant’s arguments, the primary issue in this suit is the ownership of the suit property which she occupies. It was upon her to be a diligent litigant and to undertake every action at her disposal to prosecute her suit, which she did not.
35. The Applicant’s conduct, contrary to her submissions, does not denote excusable mistake or error, but rather complete inaction and failure to take steps to collect the documents necessary to prosecute her suit.
36. Judicial time is precious. The Applicant has not established any grounds for this court to set aside the orders of dismissal of the suit for want of prosecution.
37. The application dated 29th May 2024 is therefore dismissed with no order as to costs. For avoidance of doubt, the suit stands dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS THIS 6TH DAY OF MARCH, 2025.

O. A. Angote

Judge

In the presence of;

Mr. Jaoko for Plaintiff

Mr. Mwenda for 2nd Respondent

Court Assistant: Tracy

