



**Ngala v Munyoga & 2 others (Environment & Land Case
79 of 2019) [2024] KEELC 4014 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4014 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 79 OF 2019**

FM NJOROGE, J

MAY 2, 2024

BETWEEN

UCHI KEA NGALA PLAINTIFF

AND

CHENDA KAPITA MUNYOGA 1ST DEFENDANT

CHIEF LAND REGISTRAR KILIFI 2ND DEFENDANT

LANDS REGISTRAR 3RD DEFENDANT

RULING

1. The notice of motion application dated 17th November 2023 has been filed by the Honourable Attorney General appearing for the 2nd and 3rd Defendants, and it seeks orders that the present suit is dismissed with costs for want of prosecution; and costs of the application be awarded to the 2nd and 3rd Defendants. It is premised on the grounds enumerated on its face and those established in the supporting affidavit sworn by Gabriel Ojwang.
2. The basis of the application is that the suit was instituted on 1st October 2019 vide a plaint dated 19th September 2019. Subsequently, the 2nd and 3rd Defendants entered appearance and filed a statement of defence on 7th October 2021; the 1st Defendant filed a notice of preliminary objection dated 7th October 2021 which was ultimately dismissed on 9th November 2022. Since then, the Plaintiff has failed to take any steps to prosecute the matter.
3. In a replying affidavit sworn by Michael Gitonga, counsel for the Plaintiff on 12th February 2024, counsel stated that the Plaintiff's efforts to prosecute the matter have been encumbered by interim applications, and cited the preliminary objection that was dismissed. Counsel deposed that the ruling was delivered in the absence of parties and made available months later owing to the fact that the court had gone on transfer and technical issues with the e-filing system; that his efforts to have the matter fixed



for hearing have been countered by great difficulty. Counsel urged the court to not deny the Plaintiff the opportunity to be heard.

4. On 14th February 2024, directions were issued to canvass the application by way of written submissions to be filed within a period of 28 days. Both parties failed to file written submissions.
5. In the circumstances, the application dated 17th November 2023 is dismissed with no orders as to costs for failure to comply with this court's directions. In the interest of justice, however, the Plaintiff is directed to fix the suit for hearing within 30 days, failure to which, the suit shall stand automatically dismissed for want of prosecution.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 2ND DAY OF MAY 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

