



Ndiritu & another v Balcon Housing Company Limited (Enviromental and Land Originating Summons 239 of 2014) [2024] KEELC 6566 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6566 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 239 OF 2014**

**LN MBUGUA, J
OCTOBER 3, 2024**

BETWEEN

NANCY WANGUI NDIRITU 1ST APPLICANT

JOSEPH K NDIRITU 2ND APPLICANT

AND

BALCON HOUSING COMPANY LIMITED RESPONDENT

RULING

1. Before me is the applicants’ Notice of Motion application dated 30.5.2024 seeking orders to have the suit reinstated. The application is supported by the affidavit of the 1st applicant who contends that after the suit was filed, the 2nd applicant who is her husband suffered severe brain damage, hence the applicants were unable to follow up on the matter. They have availed the medical reports to support the application.
2. I have considered the material presented to this court as well as the history of the matter. This miscellaneous suit was filed on 16.7.2014, but was dismissed on 11.12.2014 for want of prosecution.
3. In *Mwangi S. Kimenyi vs Attorney General and Another* [2014] eKLR the court stated that;

“The decision whether a suit should be re-instated for trial is a matter of justice and it depends on the facts of the case ...”
4. The applicants contend that they were unable to follow up on their case because of the ailment of the 2nd applicants. However, that explanation is insufficient since the medical reports are dated year 2019 onwards. In particular, the medical report of 22.1.2019 simply state that the 2nd applicant had a history of alcohol dependency and had audio-visual hallucinations. There is no evidence as to exactly when the 2nd applicant fell ill. I find that the hiatus of 10 years (from 2014) has not reasonably been



sufficiently explained and the delay in filing the current application impacts negatively on the overall administration of justice.

5. What more, it is noted that the miscellaneous suit itself was filed in order to seek leave to file the suit out of time!. Thus the applicants ought to have been extremely vigilant in following up their matter.

6. In the end, I find that the application dated 30.5.2024 is not merited, the same is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Jaleny for the Applicant

Court Assistant: Joan

