



Ithau & 3 others v Nandlal and Company Limited & 4 others; Action Tam of South C Ward Association & another (Interested Parties) (Environment & Land Case 147 of 2017) [2024] KEELC 13599 (KLR) (3 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13599 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 147 OF 2017
LN MBUGUA, J
DECEMBER 3, 2024**

BETWEEN

**PHOEBE MUENI ITHAU 1ST PLAINTIFF
NARA HOLDINGS LTD 2ND PLAINTIFF
MOLLY KIRAGU (SUING AS THE ADMINISTRATOR OF THE ESTATE OF SAMUEL KARAGU MUCHIKI) 3RD PLAINTIFF
MWANGI STEPHEN MUREITHI 4TH PLAINTIFF**

AND

**NANDLAL AND COMPANY LIMITED 1ST DEFENDANT
NAIROBI CITY COUNTY 2ND DEFENDANT
NATIONAL LAND COMMISSION 3RD DEFENDANT
THE HON ATTORNEY GENERAL 4TH DEFENDANT
CHIEF LAND REGISTRAR 5TH DEFENDANT**

AND

**ACTION TAM OF SOUTH C WARD ASSOCIATION INTERESTED PARTY
KENYA REVENUE AUTHORITY INTERESTED PARTY**

RULING

1. Before me is the 2nd and 4th Plaintiff's Notice of Motion Application dated 8.12.2023 seeking orders for the reinstatement of the suit which was dismissed on 16.11.2023 for want of prosecution. The application is premised on the grounds on the face of the application and the supporting affidavit of



Muyuka Mercy, the advocate applicants. She contends that when the matter came up for hearing on 16.11.2023, she indicated that she was not ready to proceed with the hearing as there was a pending application by the 1st plaintiff dated 23.10.2023 for substitution of the 1st plaintiff who was deceased. She contends that they are keen on prosecuting this matter.

2. In opposition thereof, the 1st defendant filed a Replying Affidavit dated 7.5.2024 sworn by its director, one Vinay Sanghrajka where he avers that the advocates for the applicants had appeared before the court on 9.10.2023 when they withdrew their application to cease acting averring that they were in touch with their clients. Thus the advocate for the applicants had sufficient time to appraise their clients regarding the hearing date of 16.11.2023. It is further argued that the application is frivolous and vexatious and should therefore be dismissed.
3. I have considered all the arguments raised herein. The overriding objective of our constitutional and statutory framework on civil procedure is to achieve substantive justice to the litigants, See *Gold Lida Limited vs NIC Bank Ltd & 2 other* [2018] eKLR. In the case of *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. Considering that one of the plaintiffs (the first one) was deceased, and there was a pending application for his substitution as at the time the suit was dismissed, then I find that the applicants have proffered sufficient cause to warrant a review of the orders of November 16, 2023 for their case to be reinstated. Thus the application dated December 8, 2023 is hereby allowed but with costs to the 1st defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3th DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Muyuka for Plaintiff

Vanessa holding brief for Elijah for 1st Defendant

Court Assistant: Vena

