



Olenachuru v Leperesian & 5 others (Environment & Land Case 326 of 2014) [2023] KEELC 581 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 581 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 326 OF 2014
EO OBAGA, J
FEBRUARY 9, 2023**

BETWEEN

PAUL OLENACHURU PLAINTIFF

AND

JUMA LEPERESIAN 1ST DEFENDANT

ARUPE LECHINGEI 2ND DEFENDANT

AND

DALVIN LESURTALI KOIPIRI RESPONDENT

AND

FRANCIS OLEKIPIRI 1ST DEFENDANT

MMBAITSI EVARISTUS 2ND DEFENDANT

NATIONAL LAND COMMISSION 3RD DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 14th June, 2022 in which the Plaintiff/Applicant seeks reinstatement of this suit which was dismissed on 9th February, 2022 for failure on the part of the Applicant to show cause why the same should not be dismissed for want of prosecution.
2. This suit had been listed for Notice to show cause why the same should not be dismissed for want of prosecution. The Notice to show cause was listed on 15th November, 2021. Come that date, the counsel for the Applicant asked for time to put in an affidavit explaining why the suit had not been prosecuted. The Applicant was given 14 days to file the affidavit explaining why the suit was not being prosecuted. The matter was fixed for mention on 9th February, 2022.



3. On 9th February, 2022, there was no appearance by Applicant's counsel and no affidavit had been filed explaining non prosecution of the suit. The court proceeded to dismiss the suit for want of prosecution.
4. The Applicant contends that his lawyers were unable to log in to the online court session in time and that after they successfully logged in, the case had been called out and the same dismissed. The Applicant states that he is a Police officer who had been deployed to Trans-Mara area where there were security issues and as such, he was unable to instruct his lawyers in time. He annexed an affidavit explaining why he could not prosecute his case. One of the reasons is the nature of his work and that there was Covid 19 pandemic which caused imposition of restriction of movement.
5. The Applicant's application was opposed by the 5th Defendant/Respondent based on a replying affidavit sworn on 20th September, 2022. I have considered the Applicant's application as well as the opposition to the same by the 5th Respondent. I have also considered the submissions by the Applicant. I am convinced with the explanation given as to why the affidavit explaining non prosecution was not filed and the failure to attend court on 9th February, 2022. In as much as possible, land cases have to be heard on merit. It is for this reason that I allow the application dated 14th June, 2022 with the result that the order of 9th February, 2022 dismissing the Applicant's suit is hereby set aside. The suit is reinstated for hearing. As the subject matter is in Baringo County, the Court with jurisdiction to hear cases from that area is Iten E&L court. This suit is therefore transferred to Iten. The costs of this application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF FEBRUARY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Martin for Mr. Arusei for Applicant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

9TH FEBRUARY, 2023

