



Mohammed & another v Pasha; Gitundu & another (Interested Parties) (Environment & Land Case 27 of 2018) [2023] KEELC 20578 (KLR) (11 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20578 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 27 OF 2018
MN GICHERU, J
OCTOBER 11, 2023**

BETWEEN

FATUMA AHMED MOHAMMED 1ST PLAINTIFF

MARIAM AHMED MOHAMMED 2ND PLAINTIFF

AND

ISMAEL OLE PASHA RESPONDENT

AND

CHARLES MWANGI GITUNDU INTERESTED PARTY

ANTONY KARANJA MAINA INTERESTED PARTY

RULING

1. This ruling is on the Notice of Motion dated 28/4/2023. The motion is brought under Article 50 of *the Constitution* of Kenya, Sections 80 and 3A of the *Civil Procedure Act*, Orders 51 Rule 16 and 12 Rule 17 *Civil Procedure Rules*. It seeks the following orders.
 - i. Setting aside the order dated 22/3/2017 which dismissed the suit.
 - ii. Confirmation of the interim orders of injunction issued on 3/3/2023.
 - iii. A temporary injunction to restrain the Defendants and the interested parties from dealing with L.R. No. Kajiado/Ole Kasasi/549 which has now been subdivided into parcel Numbers Kajiado/Ole Kasasi/1181 – 1193.
 - iv. Status quo to be maintained.
 - v. Reinstatement of the suit to be heard on merit.



2. The motion is premised on thirteen (13) grounds, a supporting affidavit and six (6) annexures. The gist of the motion is as follows.

The court file has been missing and while the Applicant was seeking for its reconstruction, he realized that the suit had been dismissed on 22/3/2017.

Secondly, the Applicants have an arguable case arising out of a claim for adverse possession.

Thirdly, if the suit is not reinstated, the Applicants will not be able to prosecute their legitimate claim.

Finally, the Respondents have nothing to lose because they too will be heard.

3. The motion is opposed by the first interested party who has sworn a replying affidavit dated 29/6/2023 and which has several annexures. In opposing the motion, the first interested party has raised the following issues.

Firstly, the Applicants' counsel was on 30/3/2018 served with an affidavit dated 25/1/2018 in which he was informed that the suit had not only be dismissed but it had also abated.

Secondly, on 7/2/2018 when the order of dismissal of the suit was restated by the court, Mr. Munyasya was present in court. This being the case, paragraph 17 of Mr. Munyasya's supporting affidavit amounts to perjury.

Thirdly, the Defendant passed away on 16/8/2013 and he was not substituted within 12 months as required by Order 24 Rule 4(3) of the [Civil Procedure Rules](#).

Fourthly, the court should not grant an equitable relief like the one sought by the Applicants to a party that has come to court with hands tainted with untruth.

Fifthly, the case has been overtaken by events because the Plaintiffs have already been evicted from the suit land and they lost interest in the case and that is why it was dismissed.

Finally, the Plaintiffs cannot explain why they have to come to court six years later and seek to revive a suit that has been dead for that long.

4. I have carefully considered the motion in its entirety including the affidavits, the annexures and I have also perused the entire record. I find that the motion has no merit for the following reasons.

Firstly, a perusal of the record at page 37 where the proceedings of 7/2/2018 are, shows that Mr. Munyasya though not in court was represented by Mr. Ngolya who told the court

Mr. Munyasya says that the matter was dismissed. He was not aware of the dismissal".

This means that on 7/2/2018 Mr. Munyasya became aware that the suit had been dismissed. He cannot therefore be heard to say that he only became aware of the dismissal on 7/3/2022. We know for a fact that four years and one month before, he was aware of the dismissal.

Secondly, it means that when he filed the other applications like one dated 27/12/2021 and the one dated 20/5/2022, he still knew of the dismissal of the suit.

Thirdly, on 3/3/2022, he obtained orders in a suit that had been dismissed. This is abuse of the court process.

Fourthly, the current suit was filed by the Plaintiffs on 24/3/2009. This is its fifteenth year in court. It was dismissed 22/3/2017 for want of prosecution. In addition to the current motion, there is another one by the same Plaintiffs to amend the originating summons more than 14 years since the suit was filed.



The entire suit flies in the face of *Section 3* of the *Environment and Land Court Act*, *Section 1A* of the *Civil Procedure Act* and *Article 159* of *the Constitution* all of which provide for expeditious disposal of all cases in general and land cases in particular.

For the above stated reasons, I find no merit in the motion dated 28/4/2023 and I dismiss it with costs.

In the same vein and for reasons already given, I revoke the order dated 3/3/2022.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 11TH DAY OF OCTOBER, 2023.

M.N. GICHERU

JUDGE

