



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njoroge v Chief Land Registrar & 4 others (Environment and Land Case Civil Suit 210 of 2019) [2022] KEELC 14656 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14656 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 210 OF 2019  
LN MBUGUA, J  
NOVEMBER 3, 2022**

**BETWEEN**

**MARY WAITHERA NJOROGE ..... PLAINTIFF**

**AND**

**CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT**

**BENSON MAINGI MUTAHI ..... 2<sup>ND</sup> DEFENDANT**

**HELLEN WANJIKU MAINGI ..... 3<sup>RD</sup> DEFENDANT**

**MICHAEL WAGUNDA ..... 4<sup>TH</sup> DEFENDANT**

**GRACE WAIRIMU MUIGAI ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is the application dated May 24, 2022, where the plaintiff seeks orders that the orders made on May 19, 2022 dismissing the suit herein be set aside so as to have a full hearing on the matter. The application is based on grounds on its face and on the plaintiff's supporting affidavit sworn on May 24, 2022. She avers that she instituted this suit because her land LR No 13330/194 was defrauded from her and registered in the name of the 1<sup>st</sup> and 3<sup>rd</sup> defendants, and that since 2019, she has consistently and diligently followed up the case with her previous advocates on record, one Mr Abdul Agonga.
2. She further avers that her previous advocate on record has consistently advised her that this case cannot proceed without the criminal case filed against the 4<sup>th</sup> & 5<sup>th</sup> defendants herein being finalized, and being a layman and of advanced age, she trusted that the said advocate was in charge all along. However, the matter was taking long and the said advocate was not responding to her calls and messages, thus she sought services of a new advocate who discovered that the case had been dismissed for non-attendance on May 19, 2022.



3. The application is opposed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants vide their joint replying affidavit sworn on June 29, 2022. They aver that the plaintiff abandoned the matter in this court by failing to attend court sessions on several occasions and has not served the 2<sup>nd</sup> and 3<sup>rd</sup> defendants with summons to file their defence. They also depose that the reasons the plaintiff relies on to explain her abandonment of this suit are not sufficient justification as to why this matter should be reinstated.
4. I have duly considered the issues raised herein including the rival submissions of the party. The plaintiff contends that the suit was coming up for pre-trial directions and not hearing on May 19, 2022, and that there are no sanctions for non-attendance under order 11 as only advocates are required to attend court at that stage. She also avers that the respondents have not proffered any defence. On the other hand the gist of the respondents arguments relate to the question of delay.
5. Whether the suit which was dismissed on May 19, 2022 should be reinstated is the issue falling for determination. The question that comes to my mind is; Is the applicant a litigant who intends to prosecute this matter to its logical conclusion? To answer that question, this court has had to delve into the litigation history of the case. This case was filed on June 24, 2019 contemporaneously with an application seeking injunctive orders. The matter marked time in court for a period of over two years until November 8, 2021 when this court made the following observations
 

“This court notes that the matter keeps on being mentioned due to an application filed more than two years ago. The court will just proceed to give a date for ruling in reference of the said application based on what parties have already filed on December 8, 2021. Applicant to serve”
6. The plaintiff was represented in court on that day of November 8, 2021 when a ruling on the pending application was scheduled for December 8, 2021. Come the date of December 8, 2021 and there was no appearance for the plaintiff. The court proceeded to deliver the ruling in favour of the applicant and rescheduled the matter for May 19, 2022 for pre-trial directions.
7. When the matter was mentioned in court on that day of May 19, 2022, counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants drew the attention of the court to the fact that summons to enter appearance have never been served and they urged the court to dismiss the case. There is a misconception by the plaintiff that the suit was dismissed under order 12 for non-attendance and on the 2<sup>nd</sup> and 3<sup>rd</sup> defendant’s part that the suit was dismissed for want of prosecution under order 17 rule 2 of the *Civil Procedure Rules*. The court records are clear that the suit was dismissed for failure to serve summons to enter appearance.
8. The dismissal and/or abatement of suit for failure to serve summons to enter appearance is provided for in order 5 rule 1(6) of the *Civil Procedure Rules*. In *Lee Mwachhi Kimani v National Social Security Fund & another [2014] eKLR*, it was held that;
 

“Under order 5(1) sub rule 3, 5, and 6 the plaintiff had an obligation to ensure that summons are prepared and signed by the court to facilitate service on the defendant. The provisions of order 5 rule 1 are elaborate and comprehensive and couched in mandatory terms and where for some reason the plaintiff has experienced difficulty in service, order 5 rule 2 provides reprieve in that the plaintiff can apply for the validity of summons to be extended. Service of summons is a vital step in initiating litigation and thus until the summons are properly served upon the defendant, the defendant has no valid invitation to defend the suit”
9. I find that from the word “go”, the plaintiff was reminded by this court on September 25, 2019 to serve the summons upon the defendants, this was not adhered to. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents have



specifically raised this issue at paragraph 6 of their replying affidavit. However, the applicant is mute on the issue. The arguments advanced by the applicant that the defendants have never filed a defence are hollow since there is no evidence of a formal invitation to defend the suit.

10. One of the cardinal principles in our Constitution is “the expeditious delivery of justice” – see article 159 (2) (b) of the *Constitution* of Kenya, which in effect codifies the 17<sup>th</sup> century maxim of “Justice delayed is justice denied”. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their families.
11. In the case of *Mwangi Jachienne & 2 others v Mwaura Gitbuku Also known as Bernard Mwaura J & another [2019] eKLR*, the court stated that;

“Where a litigant goes to sleep after filing a suit, he cannot blame his advocate for having not updated him on the position of the matter, or when the matter is dismissed because it has not been prosecuted or fixed for prosecution within one (1) year”.
12. The picture painted in the lifespan of this suit is unflattering, and it is evident that the applicant has been complacent and casual during the lifespan of the suit. In the circumstances, I find that the application dated May 24, 2022 is unmerited, the same is hereby dismissed with costs to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF NOVEMBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N MBUGUA**

**JUDGE**

**In the presence of:-**

Njonjo for the plaintiff/applicant

Kiima for 2<sup>nd</sup> & 3<sup>rd</sup> defendants

Allan Kamau for the 1<sup>st</sup> defendant

Court assistant: Eddel

