



**Ruare Ranch Limited v Kibugi; Muchiri & another (Interested Parties)
(Administrators of the estate of David Muchiri Kibugi) (Environment & Land
Case 298 of 2019) [2022] KEELC 14511 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14511 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 298 OF 2019
JO OLOLA, J
NOVEMBER 3, 2022**

BETWEEN

RUARE RANCH LIMITED PLAINTIFF

AND

DAVID MUCHIRI KIBUGI DEFENDANT

AND

MOSES KIUMU MUCHIRI INTERESTED PARTY

CECILIA WACHUKA MUCHIRI INTERESTED PARTY

ADMINISTRATORS OF THE ESTATE OF DAVID MUCHIRI KIBUGI

(Formerly Nyeri HCC No 41 of 1990)

RULING

1. By the Notice of Motion dated May 25, 2020, David Kiumu Muchiri Kibugi (the Defendant), Moses Kiumu Muchiri and Cecilia Wachuka Muchiri (the Interested Parties) urge the Court to dismiss this suit for want of prosecution. The application which is supported by an Affidavit sworn by Moses Kiumu Muchiri is premised on the grounds that:
 - (a) The plaintiff has lost interest in prosecuting this suit;
 - (b) The plaintiff has never taken any steps to prosecute or fix this suit for hearing since April 4, 2019 when the matter was last in Court;
 - (c) The plaintiff had previously never taken any steps to prosecute or fix the suit for hearing since January 20, 2004 thereby necessitating the filing of another application dated July 10, 2018 to have the suit dismissed for want of prosecution;



- (d) In an attempt to breathe life into the suit, the Plaintiff filed a knee jerk application dated November 6, 2018 seeking injunctive reliefs and the Court therefore issued orders of status quo over the suit property:
 - (e) The prolonged inaction by the plaintiff is in the circumstances inordinate, inexcusable and contrary to the overriding objectives of the Court;
 - (f) The indefinite existence of the suit in Court is otherwise an abuse of the process; and
 - (g) It is just and fair that the application be granted.
2. The application is opposed by Ruare Ranch Limited (the plaintiff). In a replying affidavit sworn by its director Andrew Mwarari Matu and filed herein on June 2, 2021, the plaintiff avers that the present application is similar in all aspects to the one the Applicants had withdrawn with costs on May 17, 2021.
 3. The Plaintiff avers that it has never lost interest in the suit and that it is in fact the Applicants who took their time to be substituted in place of the Defendant after his death on May 14, 1996. The Plaintiff further avers that while the Applicants were substituted by consent in the year 2000, they only acquired full mandate to defend the suit in 2013 when their grant of Letters of Administration were confirmed.
 4. The Plaintiff avers further that going by the Ruling of this Court on January 3, 2018, this matter was still active in Court and they could not get a hearing date for the main suit in 2018 because of two applications filed by the Applicants.
 5. The Plaintiff avers that from 2018, there was no substantive Judge at the Nyeri Environment and Land Court and that that fact coupled with the onset of Covid 19 pandemic adversely affected the fixing of hearing dates.
 6. The Plaintiff further avers that although this matter has been pending in Court for some time, the delay in disposing it off cannot solely be blamed on the Plaintiff as there are many factors that have contributed to the delay.
 7. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates for the parties.
 8. The Applicants/Defendants have urged this Court to dismiss this suit for want of prosecution. It is their case that the Plaintiff has not prosecuted this suit since April 4, 2019 and that previously, the suit had remained unprosecuted for a period of 14 years.
 9. Order 17 Rule 2 of the [Civil Procedure Rules](#) pursuant to which the application is brought provides as follows:
 - “(1). In any suit in which no application has been made or step taken by either party for one year, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.
 - (2). ...
 - (3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.”



10. As was stated in *Ivita -vs- Kyumbu* (1984) KLR 441:

“The test applied by the Courts in the application for dismissal of a suit for want of prosecution is whether the delay is prolonged and inexcusable, and if it is, whether justice can be done despite the delay. Thus, even if the delay is prolonged, if the Court is satisfied with the Plaintiff’s excuse for the delay, and that justice can still be done to the parties, the action will not be dismissed but it will be ordered that it be set down for hearing at the earliest time. It is a matter of and in the discretion of the Court.”

11. From the material placed before me, this suit was filed almost some 32 years ago. It is not disputed however that it was last in Court on April 4, 2019, just about a year before this present application was filed.

12. I have looked at the circumstances surrounding the period when the suit was not fixed for hearing. It is not disputed that during that period there was no resident Judge at the Nyeri Environment and Land Court and that the visiting Judges were giving priority to urgent matters.

13. It is further not disputed that the Covid-19 pandemic hit the globe around the same time and that Court processes were massively scaled down during the relevant period. Those in my view are reasons that could have weighed on the Plaintiff’s mind leading to a delay in fixing the case for hearing and I find the delay for that period of one year excusable.

14. Accordingly I decline to allow the Motion dated May 25, 2020 and hereby direct the Plaintiff to take steps to fix this suit for hearing within 30 days from today.

15. The costs of the application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 3RD DAY OF NOVEMBER, 2022.**

In the presence of:

Mr. Githui for the Applicant/Defendant

Mr. Kebuka Wachira for the Respondent

Court assistant - Kendi

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J. O. OLOLA

JUDGE

