



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'A

ELC NO. 167 OF 2017

GRACE RUGURU MWANGI.....PLAINTIFF/RESPONDENT

VERSUS

FRANCIS MWANGI KANYURU.....1ST DEFENDANT/APPLICANT

JOSEPH MWANGI MAINA.....2ND DEFENDANT/APPLICANT

SIPHIRA WAMBUI NDAIRE..... 3RD DEFENDANT/APPLICANT

MARY WANGARI MAINA4TH DEFENDANT/APPLICANT

CHIEF LAND REGISTRAR, MURANG'A..... 5TH DEFENDANT/RESPONDENT

RULING

1. Before me is a simple application dated the 15/2/2021 by the 1st -4th Applicants against the Respondent/Plaintiff seeking the suit to be dismissed for want of prosecution and being bad in law and an abuse of the Court process.
2. The application is supported by the grounds annexed and the affidavit of the 1st Applicant where he deponed that the Plaintiff has failed to prosecute the suit despite orders of the Court issued in 2016. He urged the Court to dismiss the same for want of prosecution.
3. The application is opposed by the Plaintiff Respondent through the replying affidavit of her learned counsel, Mr Njugi B Gachogu who deponed that the Plaintiff has on numerous occasions sought for more time to obtain formal responses from the relevant Courts as to the position of the pending suits. That on the 30/12/2020 he personally visited the Courts at Thika, Kigumo, and Murang'a Law Courts to procure an update to no avail. That gross injustice would be visited to the Plaintiff if the suit is dismissed at no fault of her own. He urged the Court to issue a direct order inquiring on the position of the said suits from the relevant subordinate Courts. That in the alternative the Plaintiff be allowed more time to pursue the same.
4. Whist relying on the case of **Republic Vs Paul Kihara , Hon AG & 2 others exparte LSK, (2020) eklr** the applicants submitted that filing multiplicity of suits in multiple Courts amounts to an abuse of the process of the Court.
5. It is to be noted that despite directions by the Court the Respondent failed to file written submissions.
6. A perusal of the record shows that this suit was filed on the 4/9/2015.
7. On the 4/9/2015 the Plaintiff/Respondent moved the Court vide an application for injunction interalia. The Court held the prayer for injunction was resjudicata in view of earlier orders granted in SPMCC No 73 of 2015. Further the Court noted that there were several previous proceedings concerning the suit land between the parties or some of the parties which made the current suit offend the rule of subjudice (see the affidavit of the Plaintiff dated the 4/9/2015). The Court then stayed the suit pending the hearing and determination of the previously instituted suits.
8. According to the affidavit of the Plaintiff/Respondent dated the 4/9/2015 the suits are;
 - a. CMCC No 7 of 2003-Muranga; - Francis Mwangi Kanyuru Vs Grace Ruguru Mwangi

- b. CMCC No 23 of 2003 –Thika; - Grace Ruguru Mwangi Vs Francis Mwangi Kanyuru
- c. CMCC No 652 of 2004. Thika; -Joseph Mwangi Maina Vs Francis Mwangi Kanyuru
- d. CMCC No 59 of 2004-Thika; -Joseph Mwangi Maina Vs Grace Ruguru Mwangi
- e. CMCC No 252 of 2009 –Kigumo; - Joseph Mwangi Maina Vs Francis Mwangi Kanyuru & Anor
- f. CMCC No 48 of 2004 –Kigumo – Joseph Mwangi maina Vs Francis Mwangi Kanyuru & Grace Ruguru Mwangi
- g. CMCC No 73 of 2012 –Kigumo; - Mary Wangari Mwangi Vs Francis Mwangi Kanyuru & Grace Ruguru Mwangi

9. It is the Applicant's case that since the Ruling of the Court issued on the 25/2/16 the plaintiff has not placed before the Court any evidence that the listed suits have been heard and determined to pave way for the hearing of the current suit. That the Plaintiff has taken 5 years to prosecute the case despite the various accommodation when it sought time to appraise the Court.

10. It is noteworthy that some of the Defendants are parties to the suits cited above. Although it is the Plaintiff /Respondent that alleged that the suits are pending, it is also in the circumstances of this case, upon the Defendants, in cases where they are Plaintiffs, to equally place evidence before the Court that these previous suits are no longer pending. The responsibility cannot be left upon the Plaintiff alone.

11. I have perused the annexed letters of the Plaintiff/Respondent and although her action has been noted, it is also true that no action has been taken to prosecute this case for over 12 months and therefore the suit is amenable to dismissal under Order 17 rule 2(3) of the Civil Procedure Rules.

12. Dismissing a suit is a drastic measure. I am inclined to exercise my discretion in favour of affording the parties the opportunity to have their day in Court.

13. For the reasons given under para 11 & 12 I shall be constrained to grant the application at this stage. In the interest of justice, I shall grant the parties 90 days to comply with the orders of the Court dated the 25/2/2016 to demonstrate that the suit is no longer subjudice to pave way for its hearing and disposal (in other words that the previous suits are no longer a bar to the hearing of this instant suit).

14. In default the suit shall stand dismissed.

15. The application dated 15/2/2021 is hereby dismissed.

16. The costs of the application shall be borne by each party.

17. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 29TH DAY OF JULY, 2021

J G KEMEI

JUDGE

Delivered online

Njuki Advocate for Plaintiff/Respondent

Gicheru HB Mbuthia for 1st – 4th Defendants/Applicants

5th Defendant/Applicant – Absent

Kuiyaki/Alex, Court Assistants