



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION NO E.011 OF 2020

MOHAMMED ISSA.....1ST PETITIONER

ARTHUR MWANIKI.....2ND PETITIONER

ALICE WANJIRU.....3RD PETITIONER

VERSUS

NAIROBI CITY COUNTY.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. This Ruling is in respect to the Petitioners' Application dated 16th June, 2021 in which the Petitioners are seeking for the following orders:

a) This Honourable Court be pleased to reinstate the application dated 11th September, 2020 which was dismissed by this Honourable Court on the 14th June, 2021.

b) This Honourable Court be further pleased to hear the Notice of Motion dated 11th September, 2020 as a matter of priority.

c) Costs of this application be provided for.

2. The Application is supported by the Affidavit of the Petitioners' advocate who has deponed that the Petitioners' Application dated 11th September, 2020 was set down for hearing on the 14th June, 2021; that on the said date, the Application was dismissed for non-attendance and that the reason for his non-attendance was because the internet kept on dropping and was therefore unable to address the court.

3. The Petitioners' advocate finally deponed that the Application dated 11th September, 2020 should be reinstated because the 1st Respondent is in the process of sub-dividing the land and issuing ownership documents to other persons other than the Petitioners thus depriving them the right to own private property.

4. The 1st Respondent's advocate filed a Replying Affidavit in which he deponed that on 30th September, 2020, this court issued interim orders to the Petitioners and directed the parties to file and exchange their pleadings and that the matter was mentioned on 25th February, 2021 to confirm compliance.

5. According to the Petitioners' advocate, when this matter came up for mention on 25th February, 2021, neither the Petitioners nor their advocates were in attendance; that the court gave a further mention date of 14th June, 2021 and that despite the Petitioners' advocate being served with a Mention Notice for 25th February, 2021, he did not attend court.

6. The 1st Respondent's advocate deponed that in another matter being **Nairobi ELC JR Application Number 23 of 2017** which was being handled by the Petitioners' law firm, neither the Applicant nor their advocate attended court and that the said matter was also dismissed for non-attendance.

7. The 1st Respondent's counsel finally deponed that the actions of the Petitioners and their counsel is meant to frustrate the hearing and

determination of this suit and that the Petitioners and their counsel lost interest in the suit; that explains why they did not attend court on two occasions. The advocates for both parties appeared before me on 21st September, 2021 and argued the Application orally.

8. The record shows that the Petitioners moved this court under a Certificate of Urgency. On 30th September, 2020, the Petitioners' Application dated 15th September, 2020 for conservatory orders pending the hearing and determination of the Petition was allowed by consent. The court then slated the Petition for mention on 25th February, 2021 in the presence of the Petitioners' counsel.

9. When the Petition came up for mention on 25th February, 2021, neither the Petitioners nor their advocate was in attendance. The court fixed the Petition for mention on 14th June, 2021. Despite being served with a Mention Notice by the 1st Respondent's counsel, the Petitioners' advocate was not in attendance on the said date. The court proceeded to dismiss the Petition for non-attendance.

10. Although the Petitioners have sought for the reinstatement of the Application dated 11th September, 2020, the record shows that the Application dated 15th September, 2020 had been allowed by the court. What was dismissed was the Petition, and not an Application.

11. To the extent that the Application is seeking for the reinstatement of an Application which had already been allowed by the court, it is my finding that the Application dated 16th June, 2021 is unmeritorious.

12. Even if the intention of the Application dated 16th June, 2021 was to reinstate the Petition dated 11th September, 2020 that was dismissed by this court for non-attendance, the reasons given by counsel for the Petitioners that he was unable to log in the virtual hearings because of the 'internet dropping' is not plausible.

13. I say so because the Petitioners' advocate, despite being aware of the dates that the Petition was being mentioned, failed to attend the virtual hearings on two occasions. Indeed, on the two occasions, the Petitioners' advocate did not make any attempt to join in the virtual hearings, even if it was much later in the day. It is doubtful that on both occasions, the Petitioners' advocate could not log in due to internet disruptions.

14. It is with the foregoing in mind that I dismiss the Application dated 16th June, 2021 but with no order as to costs.

15. For avoidance of doubt, the Petition stands dismissed with costs.

Dated, signed and delivered virtually in Nairobi this 30th day of September, 2021.

O. A. ANGOTE

JUDGE

In the Presence of;

Ms Mugo h/b for Mr. Njiru for the Petitioners

No appearance for the Respondents

John Okumu – Court Assistant