



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 341 OF 2013

NAOMI WANGUI KURIA.....PLAINTIFF/APPLICANT

=VERSUS=

HARRISON KARANJA NJIHIA.....1ST DEFENDANT/RESPONDENT

ONESMUS GACHUHI GITHINJI.....2ND DEFENDANT/RESPONDENT

ATTORNEY GENERAL.....3RD DEFENDANT/RESPONDENT

GITHUNGURI CONSTITUENCY RANCHING

COMPANY LIMITED.....4TH DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 13th April 2021 brought under Section 1A, 1B and 3A of the Civil Procedure Act, Order 12 Rule 7 of the Civil Procedure Rules 2010 and all enabling provisions of the law.

2. It seeks orders:-

1. That this honourable court be pleased and do reinstate the suit herein being ELC Case Number 341 of 2013 for hearing which was dismissed for non-prosecution on 10th March 2021.

2. That this honourable court be pleased to transfer this suit to the Thika High Court, Environment and Land Court (ELC) Division being the proper, and appropriate court with jurisdiction for fair, expeditious and timely final hearing and determination and disposal.

3. The Application is supported by the affidavit of Naomi Wambui Kuria, sworn on the 13th April 2021.

4. The application is opposed. There is a Replying Affidavit sworn by Onesmus Gachuhi Githinji the 2nd Defendant/Respondent sworn on the 9th June 2021.

5. I have considered the Notice of Motion and the affidavit in support. I have also considered the Replying Affidavit and the annexures, the oral submissions of counsel. The issue for determination is whether this application is merited.

6. I have gone through the court record. It appears the plaintiff was last represented in court on 11th December 2019. Mrs. Njiru then informed the court that she had since ceased acting for the plaintiff.

7. Owing to the plaintiff's lack of interest in prosecuting this case, the 2nd defendant filed an application to dismiss the suit for want of prosecution dated 7th November 2019. The plaintiff was served with the said application by way of advertisement through The Standard Newspapers.

8. On the 10th March 2021 the plaintiff neglected to attend court to defend the said application. The same was allowed.

9. I have gone through the supporting affidavit of the plaintiff. I find no plausible explanation to explain the delay in prosecuting this suit.

10. The plaintiff has failed to persuade this court that it should exercise discretion in her favour.

11. I find no merit in this application and the same is dismissed with costs to the 2nd Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 21ST DAY OF OCTOBER 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the 1st Defendant

Ms Kalaine for the 2nd Defendant

No appearance for the 3rd and 4th Defendants

Steve - Court Assistant