



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 511 OF 2012

SARAH NYAMBURA WAMBIRO.....PLAINTIFF

=VERSUS=

LABAN NGIGI.....1ST DEFENDANT

EMBAKASI RANCHING COMPANY.....2ND DEFENDANT

JOSEPH MBUGUA.....3RD DEFENDANT

LILIAN WAMUYU WAHOME.....INTERESTED PARTY

RULING

1. This is the Notice of Motion dated 24th July 2019 brought under Section 1A, 1B and 3A of the Civil Procedure Act, Order 12, Rule 7 Order 8 Rule 5, Order 9 Rule 9, Order 10 rule 11 and Order 51 Rule 1of the Civil Procedure Rules 2010 and all enabling provisions of the law.

2. It seeks orders:-

1. Spent.

2. Spent.

3. Spent.

4. The 2nd Defendant and or/its servants, agents and assigns be hereby restrained from conducting further proceedings relating to any of the suit properties including Plot No. V 2124 pending hearing and determination of this suit.

5. Spent.

6. The 2nd Defendant and or/its servants, agents and assigns be hereby restrained from allocating any of the suit properties including Plot No. V 2124 pending hearing and determination of this suit.

7. The Plaintiff be granted leave to amend her pleadings to reflect her name as Sarah Nyambura Karanja in place of Sarah Nyambura Wambiro.

8. The ruling made on 13th March 2015 for want of prosecution and non-attendance together with all consequential orders be set aside.

9. The Plaintiff's suit be reinstated.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 9.

4. The application is supported by the affidavit of Sarah Nyambura Karanjah, the Plaintiff/Applicant sworn on the 24th July 2019.

5. The application is opposed. There is a replying affidavit sworn by Joseph Mbugua, the 3rd Defendant/Respondent sworn on the 9th December 2019.

6. On the 11th December 2019, the court with the consent of the parties directed that the application be canvassed by way of written submissions.

7. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit and the annexures. I have considered the written submissions on behalf of the parties. The issue for determination is whether this application is merited.

8. I have gone through the court record. This suit was dismissed for want of prosecution on 13th March 2015. This application was filed on 24th July 2019 about four years later. The plaintiff appears to blame her previous advocates Ms Kihanya and Company Advocates for failure to attend to the matter.

9. I find that the delay in bringing this application is inordinate. The plaintiff has offered no plausible explanation for the delay. In the case of **John Muruti Thumi & 4 Others vs Fidelity Commercial Bank Ltd & 4 Others [2016] eKLR** Justice C. Kariuki relied on **Ivita vs Kyumbu [1984] KLR 441**, where Chesoni J, (as he then was) in considering a delay in filing and prosecuting matters held that:

“ The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice in both the plaintiff and defendant; so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time.”

10. In the case of **Utalii Transport Company Ltd & 3 Others vs NIC Bank & another [2014] eKLR Justice F. Gikonyo**, stated as follows:-

“.....the court held that it is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court. The decision on whether the suit should be reinstated for trial is a matter of justice and it depends on the facts of the case....I find this application has no merit and I dismiss it with no orders as to costs as it was undefended”.

11. I am guided by the above authorities, in finding that the plaintiff has been indolent in prosecuting this matter. She does not deserve the exercise of this court’s discretion in her favour.

12. I find no merit in this application and the same is dismissed with costs to the 3rd Defendant.

It is so ordered.

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

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Omoiti for the Plaintiff

No appearance for the Defendant

Steve - Court Assistant