



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO.1571 OF 2007

KENYA ANTI-CORRUPTION COMMISSION.....PLAINTIFF

VERSUS

GIGIRI COURT LIMITED.....1ST DEFENDANT

JOHN JOSEPH KAMOTHO.....2ND DEFENDANT

WILSON GACHANJA.....3RD DEFENDANT

JAMES RAYMOND NJENGA.....4TH DEFENDANT

RULING

1. This is the Notice of Motion dated 3rd March 2021 brought under the provisions of section 1A, 1B and 3A of the Civil Procedure Act 2010, order 17 rule 2(1) and (2) and Order 51 rule 1 of the Civil Procedure Rules 2010.

2. It seeks orders:-

1. Spent.

2. That this honourable court be pleased to set aside the orders issued on 19th October 2020 dismissing the suit herein.

3. That the suit herein be reinstated.

4. That the costs of this application be in the cause.

3. The grounds are on the face of the application and are set out in paragraphs (a) to (i).

4. The application is supported by the affidavit of Grace Maina, Advocate for the Plaintiff, sworn on the 3rd March 2021.

5. The application is opposed. There are grounds of opposition filed by the 1st Defendant/Respondent dated 7th April 2021. There are also grounds of opposition filed by the 3rd Defendant dated 12th March 2021. It appears the 2nd and the 4th Defendants did not file any responses.

6. On the 28th June 2021, the court with the consent of parties directed that the notice of motion be canvassed by way of written submissions.

7. I have considered the notice of motion and the affidavit in support. I have considered the grounds of opposition, the written submissions filed on behalf of the parties and the authorities cited. The issue for determination is whether this application is merited.

8. I have considered the circumstances of this case. The cause of action is public land that was unlawfully acquired by the 2nd Defendant and subsequently transferred to the 1st Defendant. This is indeed a matter of public interest touching on public land. It ought to be heard on merit.

9. In the case of **Mwangi S. Kimenyi vs Attorney General & Another [2014] eKLR** Gikonyo J stated that:-

“.....And I stated earlier, dismissal of a case is a draconian judicial act which drives the plaintiff away from the seat of justice. It should be done sparingly and in cases where dismissal is the feasible and just thing to do. Therefore, courts should strive to sustain suits rather than dismiss them especially where justice would still be done and fair trial had despite the delay. Any explanation for the delay which is given should be properly evaluated by the court to see whether it is reasonable”.

I am guided by the above authority in finding that the Plaintiff’s case ought to be heard on its merits.

10. No prejudice will be occasioned to the Defendants if this suit is heard to conclusion.

11. In conclusion, I find merit in this application and the same is allowed. The Plaintiff is directed to expeditiously set down the suit for hearing so that the issues herein can be resolved.

12. Accordingly, I make the following orders:-

(a) That the orders issued on 19th October 2020 dismissing the suit are hereby set aside.

(b) That the suit is reinstated.

(c) That costs of this application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 11th day of November 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Ms Maina for the Plaintiff

Ms Kibore for the 1st Defendant

No appearance for the 2nd Defendant

Ms Muriithi for Mrs. Omutimba for the 3rd Defendant

Steve - Court Assistant