



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 411 of 2013

LOISE MUMBI GACHINGA

BERNARD NG'ANG'A GACHINGA.....PLAINTIFFS

VERSUS

STEPHEEN KIIRU MUGO.....1ST DEFENDANT

ALICE WAIRIMU NGIGI.....2ND DEFENDANT

JOSEPH ICHURA MUGO.....3RD DEFENDANT

MICHAEL GACHINGA MUGO.....4TH DEFENDANT

AGNES WANJIRU MUGO.....5TH DEFENDANT

RULING

1. There are two pending applications in this file. The 1st one is the Notice of Motion dated 2nd March 2021 where the Plaintiff is seeking injunctive orders against the Defendants. When the said application came up before the Judge on 9.4.2021, the court noted that the suit had been dismissed on 20.5.2020. The other application is the one dated 18.5.2021 seeking orders for the reinstatement of the suit. When the matter came before me for the very first time on 17.11.2021, counsel for the Applicant simply stated that they had served and they desired to have a date for ruling. The court reserved a date for ruling in respect of the application dated 2.3.2021. However, going by the previous records of the court particularly the last orders given by Judge Eboso on 3.6.2021, it is apparent that the application due for ruling is the one dated 18.5.2021 for reinstatement of the suit. In any event, the application for injunction cannot stand where there is no suit.

2. I have keenly considered the application dated 18.5.2021. I have also found it necessary to delve into the history of the proceedings herein. On 14th May 2019, the Plaintiffs were ordered to file a bound, paginated and indexed bundle of pleadings, witness statements and other supporting documents within 30 days. When the matter was mentioned on 22nd October 2019, the Plaintiffs had not complied and were given 30 more days to comply failure to which the suit would stand as dismissed. The matter was then mentioned on 20th May 2020 and the court noted that there was no evidence of compliance which led to the dismissal of the suit in the following words: “...**Consequently, this suit stood dismissed upon expiry of the 30 days...**”. It should be noted that when the court gave these orders in May and October 2019, the Plaintiffs’ advocates were in court on both occasions.

3. On 2nd March 2021 the Plaintiffs filed the application for injunction and on 18th May 2021 they filed the application for reinstatement of the suit on grounds that on the day the suit was dismissed, counsel for the Plaintiffs was absent from court due to Covid-19 restrictions and only learnt of the dismissal when they filed the application dated 2nd March 2021. It is worth pointing out that the bundle of documents on the court file was filed on 27th February 2020 almost four months after the deadline given by court in October 2019.

4. On 30th June 2021 when the reinstatement application came up for hearing via virtual court, the court found that service had not been effected properly and ordered that the application be served through a prominent notice in either the Daily Nation or the Standard Newspapers within 30 days. There is no evidence that such service as ordered by the court was effected.

5. On 17th November 2021 when the matter came up, the Plaintiff’s advocate indicated that they had served the defendants. From the affidavit of service on the court CTS dated 14th November 2021 sworn by **Protus Litwaga**, the Court Process Server averred that the hearing notice was served to the Defendants but they declined to sign. I note that this is the same assertion that was made on the affidavit of service dated 29th June 2021 which was rejected by the court on 30.6.2021.

6. It is clear from the history outlined herein that the advocate for the plaintiff has been flagrantly flouting court orders despite the court exercising leniency and granting him numerous opportunities to right the wrong. It is therefore apparent that the Plaintiff and his advocate are in violation of the provisions of **Section 1A (3) of the Civil Procedure Act.**

7. In the circumstances, the application dated dated 18th May 2021 for reinstatement of the suit is dismissed for want of service. There being no suit existing as at the time the application dated 2.3.2021 was filed, then the said application is likewise dismissed. This matter is marked as CLOSED.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER, 2021 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Court Assistant: Eddel Barasa