



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 136 OF 2007

KIIRU M'MUGAMBI.....APPLICANT/PLAINTIFF

VERSUS

MOSES KIRIMA (T/A MEENYE & KIRIMA ADVOCATES.....1ST RESPONDENT

LAWRENCE GITUMA KITHUO.....2ND RESPONDENT

GIDEON MUGAMBI MWORIA.....3RD RESPONDENT

JOSEPHAT MUTAI MWARANIA.....4TH RESPONDENT

RULING

1. This matter relates to a Notice of Motion dated 11/7/2017 brought pursuant to **Order 51 Rule 1, Order 10 Rule 11 of the Civil Procedure Rules and Section 3 and 3A of the Civil Procedure Act**. The applicant /plaintiff seeks an order for the re-instatement of his application dated 20/5/2016.
2. The application is supported by the grounds set out in its body and supporting affidavit of his advocate, B.G Kariuki sworn on 11/7/2017. It is contended that the application dated 20/5/2016 was dismissed on 30/6/2017 due to technical and unavoidable circumstances and that applicant will suffer irreparable damages if the application is not allowed.
3. The application was opposed by the 1st defendant vide his replying affidavit sworn on 23/1/2019. He deponed that the application dated 20/5/2016 was dismissed due to the applicant's failure to zealously follow up on his application to its finality. Similarly, after filing the current application 14/7/2017 the same was served upon them on 7/12/2018. This proves again the lack of applicant's seriousness to prosecute the matter. Litigation must come to an end and the court should be reluctant in giving audience to non-committed litigants.
4. This matter was canvassed by way of written submissions. The applicant submitted that he seeks to re-instate the application which had sought the directions of the court as to who should pay costs of the suit.
5. The 1st respondent submitted that reinstatement is not warranted as the applicant is not keen in prosecuting his matter and the glaring indolence has been there since 2003. The 2nd respondent submitted that the application is not merited and should be dismissed as no good reasons have been advanced to support the claim of the applicant.
6. The issue for determination is **whether to re-instate the application dated 20/5/2016**.
7. When it comes to matters of re-instatement of a Suit/Application, I incline myself to the words stated by Gikonyo J in the case of **John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation) [2015] eKLR** where he held as follows:

“The decision of the court is purely a matter of discretion which as it has been said time and again should be exercised judicially on defined principles of law. The fundamental principles of justice are enshrined in the entire Constitution and specifically in Article 159 of the Constitution. Article 50 coupled with article 159 of the Constitution on right to be heard and the constitutional desire to serve substantive justice to all the parties, respectively, constitutes the defined principles which should guide the court in making a decision on such matter of reinstatement of a suit which has been dismissed by the court.....

The same test will apply in an application to reinstate a suit and a court of law should consider whether there are reasonable

grounds to reinstate such suit-of course after considering the prejudice that the defendant would suffer if the suit was reinstated against the prejudice the Plaintiff will suffer if the suit is not reinstated.”

8. The test as to whether to reinstate the suit is therefore based on reasonable grounds while taking into account prejudice that may be occasioned to the respondents if the matter is reinstated. Both parties interests must be taken into consideration.

9. The applicant filed the application dated 20/5/2016 where he sought an order for the court to direct who amongst the defendants should pay the costs of the suit. The application was dismissed on 30/6/2017 as plaintiff had failed to serve 1st and 4th respondents.

10. An applicant ought to be vigilant in prosecution of his case without delay. In this case the applicant took about a year without pursuing prosecution of his application. He stated that the reason was due to technical and unavoidable circumstances, which I consider to be a vague explanation which does not suffice. The Honorable Judge Cheronu had even noted on 30.6.2017 that ***“the plaintiff has lost interest in this case which was filed on 2007”***. The applicant ought to have given a plausible account as to why he was unable to serve the other respondents yet the matter had been mentioned less than a month earlier on 23.6.2017.

11. The up shot of my findings is that this application is unmeritorious and the same is hereby dismissed with each party catering for their own costs in respect of this application.

DATED SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 12TH DAY OF FEBRUARY, 2020.

IN THE PRESENCE OF: -

C.A Kananu

Mutegi holding brief for B.G Kariuki for plaintiff

Gatari R. for 2nd defendant

HON. LUCY N. MBUGUA

ELC JUDGE