

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 123 OF 2010

MARY WAIRIMU PETER NGAARI.....PLAINTIFF

VERSUS

PAN AFRICAN PROPERTIES &

INVESTMENTS LIMITED.....1ST DEFENDANT

FRANCIS NGUGI WAWERU.....2ND DEFENDANT

SERAH NYAMBURA WAIRUMBI.....3RD DEFENDANT

RULING

This suit was dismissed on 16th March, 2015 for want of prosecution. By the time the suit was being dismissed, it had remained dormant for over 4 years. What is now before me is an application brought by the plaintiff by way of a Notice of Motion dated 9th June, 2015 seeking the setting aside the said order of dismissal and the reinstatement of the suit. The plaintiff has also sought an injunction restraining the defendants from trespassing on, alienating or in any other way interfering with the plaintiff's possession of all those parcels of land known as Limuru/Ngecha/2064 and Limuru/Ngecha/2065 ("the suit properties") pending the hearing and determination of the suit and in the alternative, an order that the status quo be maintained in respect of possession and occupation the suit properties pending the hearing and determination of the suit. The plaintiff has sought a further order that the proceedings that the defendants had instituted against her before the Chief of Ngecha Location be stayed.

The application was brought on the grounds that the plaintiff's failure to prosecute the suit was inadvertent and that it was occasioned by the negligence of the plaintiff's previous advocates. The plaintiff averred that the mistake of her previous advocates should not be visited upon her. The plaintiff averred further that she had occupied the suit properties with her family since 1999 and was still in occupation thereof. The plaintiff averred that the 2nd defendant had fraudulently acquired and transferred one of the suit properties namely, Limuru/Ngecha/2064 to the 3rd defendant who had obtained an illegal title in respect thereof.

The plaintiff averred that the defendants had attempted to evict her from the suit properties and that they would proceed to do so unless restrained by the court. The plaintiff averred that in their effort to evict her from the suit properties, the defendants had enlisted the services of the chief of Ngecha Location to harass and intimidate her through unnecessary summons. The plaintiff averred that she would suffer irreparable loss if the orders sought were not granted.

The plaintiff's application was not opposed by any of the defendants. When the application came up for hearing on 27th February, 2020, only the plaintiff's advocate attended court. The advocates for the defendants did not appear in court despite service having been effected upon them. Mr. Alekin who appeared for the plaintiff urged the court to allow the application as prayed since the same was not opposed.

I have considered the application together with the affidavit filed in support thereof. I am of the view that the plaintiff has not given reasonable explanation why she failed to prosecute this suit for a period of over 4 years before the same was dismissed on 16th March, 2015. I am of the view that the fact that the plaintiff's former advocates were negligent in the performance of their duties to her is not a sufficient ground to warrant an exercise of the courts discretion in her favour. The case belonged to plaintiff and as such she had a responsibility to follow up the same with her said former advocates. If she had done that, I believe that she would have noted much earlier that no action was being taken in the matter and would have taken steps to remedy the situation.

For the foregoing reasons, I find no merit in the plaintiff's application. I have noted however that the application was not opposed. This means that the defendants are not likely suffer any prejudice if the application is allowed. For that reason alone, I will allow the application dated 9th June, 2015 in terms of prayers 2 and 5 thereof. The costs of the application shall be in the cause.

Delivered and Dated at Nairobi this 2nd Day of March, 2020

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

Mr. Alekin h/b for Ms. Ratemo for the Plaintiff

Ms. Njogu h/b for Mr. Anyoka for the Defendants

Ms. C. Nyokabi-Court Assistant