



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC NO. 1707 OF 1998

MUTITHI WOMEN GROUP.....PLAINTIFF

VERSUS

KIRINYAGA COUNTY COUNCIL.....1ST DEFENDANT

GICHUHI GITHUMBI.....2ND DEFENDANT

JACINTA WAIRIMU MUBARI.....3RD DEFENDANT

PATRICK CHARAI GICHUHI.....4TH DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 10th February 2014 in which the Plaintiff/Applicant seeks for orders to review and set aside the order dismissing this suit with costs made by this court on 6th December 2013 and orders reinstating this suit for hearing.

The Application is premised on the Supporting Affidavit of Gladys Wanjiru Maingi sworn on 10th February 2014 in which she averred that she is the Secretary of the Plaintiff/Applicant herein. She further averred that the Plaintiff/Applicant engaged the services of J.K. Gatuguta & Co. Advocates to handle this matter from their offices located at City Hall Annex. She further averred that the said offices were later relocated to Hurlingham area. She further averred that the original partner in the said law firm passed on and the firm was taken over by his son. She further stated that they have been communicating with the said son who had been assuring them that this suit has been progressing well. She stated further that they were surprised to hear that this suit was dismissed in December 2013. She also stated that she learnt that their said advocates had been served with the application seeking dismissal of this suit but stated that they were never informed about that application. She then stated that the 4th Defendant is threatening to evict them hence this application, and further added that their suit stands good chances of success. She requested the court not to visit the mistakes of their advocates upon them and further that the Plaintiff/Applicant comprises of mainly elderly women.

The Application is contested. The 2nd Defendant/Respondent, Gichuhi Githumbi, filed his Replying

Affidavit sworn on 19th March 2014 in which he averred that the communication documents in court will reveal that the firm of Gatuguta & Co. Advocates moved their offices to Hurlingham Plaza, 2nd Floor Room C13 as early as the year 2007 therefore it is a period of over 7 years and if the Plaintiff/Applicant did not know where their advocates were all these years it is a sign of their laxity and lack of interest in their suit which was rightfully dismissed. He further stated that the Plaintiff/Applicant cannot say that they could not trace their advocate yet they could talk to him on phone. He also averred that the laxity of the Plaintiff/Applicant is further demonstrated by the fact that this suit was dismissed way back on 22nd February 2006, again for want of prosecution but the court generously granted the Plaintiff/Applicant another chance to prosecute this matter, which chance they again grossly abused. He added that having refused to prosecute this suit since the year 2008, the Defendants/Respondents via an Application dated 18th July 2012 sought for its dismissal but again the court kept extending its leniency to the Plaintiff/Applicant to no avail. He further stated that the Plaintiff/Applicant only woke up from their deep slumber after they were served with an eviction notice in February 2014. He concluded by stating that the Plaintiff/Applicant are seeking equitable orders yet equity should only come to aid the vigilant which the Plaintiff/Applicant clearly is not.

Both the Applicant and the Respondents filed their written submissions.

The issue that I am called upon to determine is whether or not to set aside my orders issued on 6th December 2013 dismissing this suit for want of prosecution. The applicable law is to be found in **Order 45 rule 1(1)** of the **Civil Procedure Rules, 2010** which provides as follows:

“Any person considering himself aggrieved by ... an order ... but from which no appeal has been preferred and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time the order was made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the ... order, may apply for a review ... to the court which ... made the order without unreasonable delay.”

I have considered the reason advanced on behalf of the Plaintiff/Applicant as to why I should set aside my order dismissing this suit for want of prosecution which I issued on 6th December 2013. Their main argument is that they could not trace their lawyers being J.K. Gatuguta & Co. Advocates who had relocated their offices from City Hall Annex to Hurlingham area. The Plaintiff/Applicant however concedes that the application was served upon their said lawyers who did not file any response thereto. The Plaintiff/Applicant however confirms having been in contact with their said lawyers by phone. I have to say that I do agree with the Defendants' assertion that the excuses given by the Plaintiff/Applicant hold no water for the reason that it is evident from communication received from J.K. Gatuguta & Co. Advocates that they had moved their offices to Hurlingham Plaza, 2nd Floor Room C13 as early as the year 2007. It does not therefore make sense that the Plaintiff/Applicant was unaware of their lawyer's offices for that period of time. Further, the Plaintiff/Applicant confirms that they have been in communication with their said lawyer by phone. It does not therefore add up that they could not have been informed of their lawyer's new offices in Hurlingham area. The upshot of this is that the Plaintiff/Applicant has no “sufficient reason” for their failure to participate in the application seeking to dismiss this suit for want of prosecution which order they seek to have this court set aside. I have also perused the court record and have confirmed that this suit did come up for dismissal for want of prosecution in the year 2006 and did indeed get dismissed but was reinstated. This trend by the Plaintiff/Applicant points to the undeniable fact that the Plaintiff/Applicant is not interested in setting down this suit for hearing for the final conclusion thereof and continue to enjoy occupying the suit property ad infinitum. In light of this, I find that the Plaintiff/Applicant has not furnished this court with a sufficient reason to warrant reinstating this suit.

Arising from the foregoing, I hereby dismiss this Application with costs to the Defendants.

DELIVERED AND SIGNED IN NAIROBI THIS 12TH DAY OF MAY, 2015.

MARY M. GITUMBI

JUDGE