REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 113 OF 2011

MERU UNIVERSITY OF SCIENCE AND TECHNOLOGY.....PLAINTIFF

VERSUS

M'NGARUTHI MUGAMBI & 169 OTHERS..... DEFENDANT

RULING

1. This matter was concluded via a consent judgment filed in court on 18.9.2017. On the same date, the present applicants filed this application seeking for the following orders; that the firm of Kevin Nyenyire & co. advocates be granted leave to come on record for the interested parties and that the consent judgment entered and dated 27.7.2017 and all the other subsequent orders there to be set aside.

2. The grounds in support of the application are that the interested parties **Elias Mwenda, George Mbogo M'Muthinja, Festus M'Ikiugu Mbui and Moses Ntomo Mbui** were never given an opportunity to be heard, that the plaintiffs and defendants entered into a consent judgment when there was a pending application dated 1.12.2015 seeking to enjoin the interested parties to this suit and that the interested parties will be adversely affected by the consent judgment unless the same is reviewed.

3. There is also a supporting affidavit sworn by one Elias Mwenda on behalf of himself and the other interested parties.

4. The plaintiff opposed the application by way of grounds of opposition filed on 21.9.2017 where it is averred that the applicants have no locus standi as they were never parties to this suit. It is further averred that the notice of motion dated 1.12.2015 has never been served upon them.

5. Mr. Ndubi counsel for defendants had stated that he was at a loss as to how to respond to the present application as he had already executed his client's instructions vide the consent judgment. He suggested that his clients, 169 of them be served directly.

6. The Attorney General did not file any replying affidavit or submissions.

Determination

7. The brief background to this case is that Meru University College of Science and Technology had on 10.8.2011 sued the 169 defendants seeking inter alia orders for the defendants to be evicted from the suit land. The suit between these parties was finalized through a consent judgment dated 27.7.2017 which entailed a compensation and resettlement programme.

8. The present applicants aver that they too were occupants of the land in question. They had therefore filed the application dated 15.12.2015 to be enjoined in this suit which application was not considered when the consent judgment was entered into.

Application dated 15.12.2015

9. Indeed this application is on record. However, the truth is that it was never finalized primarily because the applicants never moved the court to have the same prosecuted. From the time the Application was filed on 15.12.2015, nothing happened for the next eight months until 3.8.2016 when the A.G took a date for their own application to be enjoined in the matter. Thereafter, not a single date was taken for the prosecution of the suit. On 26.1.2017, the present applicants simply requested for a mention date for 14.3.2017, on which date it emerged that the application of 15.12.2015 **was never served**. The court directed the same to be served and it was to come up on 30.5.2017 when it emerged that the parties herein had settled the case. **The delay in prosecution of the application of 2015 was inordinate, unexplained and inexcusable.**

10. The applicants were not vigilant in their attempt to be part of the proceedings herein. They cannot now claim that they have been left out.

11. In the case of **Professor Mwangi Kaimenyi vs The A.G and another Nairobi Commercial & Admiralty division CC No. &20 of**

2009 Gikonyo J had this to state:

> ***"A party should always take steps to progress his case to logical conclusion. That is a requirement for justice and overriding objective in assisting the court to attain expeditious and just disposal of cases which follows the long standing adage "Justice delayed is justice denied……..".***

12. The present applicants are therefore estopped from holding onto the application of 2015 to have the case re-opened.

Consent Judgment of 27.7.2017

13. It is not disputed that such a consent was entered into by the parties in the suit.

14. Order 1 rule 2 of the civil procedure rules provides that;

> ***"Where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may either on the application of any party or of its own motion put the plaintiffs to their election or order separate trials or make such other order as may be expedient".***

15. In **Ngolua Mwaine vs Alexander Kamathi M'Ithili Meru HCC No. 99 of 2003** it was stated that;

"A party can only be joined in a suit at any stage in the course of the proceedings and not later.

16. The word proceedings is defined in the **Black's Law Dictionary 7th edition** to mean inter alia ***"The regular and orderly progression of a law suit, including all acts and events between the time of commencement and entry of judgment".***

17. This is a concluded matter and there is no evidence to indicate that the consent judgment was entered into irregularity.

18. It is not lost to this court that execution has apparently taken place. It follows that the claim of the applicants cannot be resolved in this forum.

19. In the case of **Rehema Raibuni & 4 others vs Mohamed Iqbal Abdul Karim & 3 others, Meru ELC No. 132/2007,** I made reference to the case of **Joseph Leebo & 2 others vs Director Kenya Forest Services & another ELC No. 273/12 Eldoret** where it was held that; ***"Since there was no defined rules as to how involved in the litigation an interested party could be, it fell upon the discretion of the court to define the parameters of involvement of the interested party. This depended on the circumstances of each case……".***

20. The circumstances of this case are that this suit was settled way back in July 2017. The parties involved were content and the judgment has been executed. The compensation and resettlement program of the 169 defendants has been finalized. It would certainly be prejudicial to the plaintiff and defendants to re-open this case all over again.

Conclusion

21. The application by the proposed interested parties has no merits in so far as the issue of re-opening the case is concerned. The application is disallowed although advocate Nyenyire is allowed to be on record for the applicants. Costs in the cause.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 7TH JANUARY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Miss Njenga holding brief for Nyenyire for interested party

Applicants

HON. LUCY. N. MBUGUA

ELC JUDGE