



**Gitamaiyu Residents Forum Welfare Group v Mweiga Estate Ltd & 8 others
(Petition E009 of 2022) [2025] KEELC 7913 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7913 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
PETITION E009 OF 2022**

JA MOGENI, J

NOVEMBER 13, 2025

**IN THE MATTER OF ARTICLES 2, 3(1), 22(1), 23(1) & (3), 27(1)
& (2), 40(1) (2) & (3), 47 (1), 50 (1), 60 (1) (B), 165 (3) (B) & (6) AND
258 (1) AND (2) (B) OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF RULES 4(1), 10, 13 AND 23(1) OF THE
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

**IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND
COORDINATION ACT, 1999 AND THE REGULATIONS MADE THEREUNDER**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 2,
3 (1), 22 (1) AND 60 (1) (B) OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION AND/OR APPREHENDED
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF
ARTICLES 27 (1) & (2), 35, 40 (1) (2) & (3), 42, 43, 47 (1) AND (2) AND 50 (1), 56,
60,61, 63(1), (2), (3), (4), 67 (2) (E) OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

GITAMAIYU RESIDENTS FORUM WELFARE GROUP PETITIONER

AND

MWEIGA ESTATE LTD 1ST RESPONDENT

DENNIS KIMANI KIBE 2ND RESPONDENT



RAPHAEL KIBE KIMANI	3 RD RESPONDENT
THE CHIEF LAND REGISTRAR	4 TH RESPONDENT
DIRECTOR OF SURVEY	5 TH RESPONDENT
ATTORNEY GENERAL	6 TH RESPONDENT
NATIONAL ENVIRONMENT AND MANAGEMENT AUTHORITY	7 TH RESPONDENT
KENYA ROADS BOARD	8 TH RESPONDENT
NATIONAL LAND COMMISSION	9 TH RESPONDENT

RULING

1. Before me are two applications one dated 23/10/2024 filed by the 1st Respondent to this Petition and a second one dated 21/01/2025. For the Application dated 23/10/2024, the 1st Respondent seeks an order for the dismissal of this Petition for want of prosecution. The grounds for the application are that the Petitioner has failed to prosecute the Petition or take appropriate steps towards the disposal of the Petition. Further that the Petitioner has deliberately failed, refused and/or neglected to comply with orders and directions of this Court issued to facilitate the expeditious disposal of the Petition that were issued by the Court on 24/04/2023.
2. It is averred that neither the Petitioner nor their Advocate have been keen to prosecute the Petition as from 24/04/2023 when the Court directed that the Petition be served upon all the Respondents within three (3) days and the Petitioner was directed to file an Affidavit of Service. Further the Petitioner was directed to extract the order made by the Court and serve all the Respondents within 3 days and file an Affidavit of Service.
3. That despite the Court issuing the said orders the Petitioner did not comply. As a matter of fact, the Court has mentioned this matter an aggregate 7 times but neither the Petitioner nor its Advocates attended Court making it more than two years since the matter was last in Court. The 1st Respondent further states that the delay is an indication that the Petitioners have lost interest in prosecuting the Petition, consequently unjustly prejudicing the 1st Respondent.
4. The application is supported by the Affidavit of James Muriithi Kieu, Director of the 1st Respondent. He has reiterated the grounds on the application and further deposed that it is in the interest of justice enjoined by Rule 3 (5) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 to facilitate the just, expeditious, proportionate and affordable resolution of cases before it.
5. That litigation must come to an end and this Court in fulfilment of its Constitutional mandate ought to vindicate the 1st Respondent's rights to a fair and speedy trial by dismissing this Petition.
6. The application was duly served on the Petitioner and they filed a Replying Affidavit sworn by Dickson Mungai Kimani on 15/11/2024 the Chairman of the Petitioners. He averred that the Petitioner is ready and willing to have this matter heard and determined on merit for closure of the dispute between Residents of Gitamaiyu Village in Kiambu County and the alleged proprietors and/or occupants of the suit property LR No. 5956/2, IR 5956/6 and LR 5956/5 for IR No. 96816.



7. It is the averment of the Petitioner that the individuals forming Gitamaiyu Residents Forum Welfare Group have utilized the public space which is a swampy ground to cultivate crops while using the public roads to access their farms and homes from colonial times until when the 1st, 2nd, 3rd Respondents fenced off the property for their own personal use.
8. It is the Petitioner's averment that whereas this matter was filed in 2022 the delay in progressing it is attributable to the unforeseen death of the 2nd and 3rd Respondents and so the Petitioner was attempting to locate their legal representatives but they have not been successful.
9. At the same time the Petitioner avers not to have been able to identify one Lucy Nyamwathi Kimani who is listed as the next of kin to Raphael Kibe Kimani (deceased) as per the annexure GM-1 of the title. Therefore, the Petitioner contends that the dismissal of the Petition would unfairly prejudice them and all other individuals who have a legitimate claim that has to be adjudicated.
10. The Petitioner further contends that the 1st Respondent/Applicant has illegally acquired LR 5956/2 IR No. 5956/6 while the 2nd and 3rd Respondents have illegally acquired land parcel number LR 5956/5 IR No. 96816 which parcels are adjacent to each other.
11. According to the Petitioner, the main Petition has also challenged the action and decision of the 4th and 5th Respondents to survey and issue title for public land and public road to the 1st, 2nd and 3rd Respondents being LR No. 5956/6 and parcel LR No. 98816 without consultation with affected persons contrary to values and principles of good governance as per Article 10 of *the Constitution*.
12. The Petitioner avers that the 1st Respondent does not stand to suffer any prejudice if the Petitioner is allowed an opportunity the deceased Respondents with their valid legal representatives since allowing the 1st Respondent's application is akin to driving the Petitioner from the seat of justice unheard because of their inability to successfully find a party to substitute the deceased 2nd and 3rd Respondents.
13. The Petitioner prays for dismissal of the Notice of Motion dated 26/10/2024 (I assume this is a typo since the Notice of Motion is dated 23/10/2024).
14. The 1st Respondent filed a Supplementary Affidavit sworn on 17/12/2024 where he challenged the averments made by the Petitioner about not being able to trace the 2nd and 3rd Defendants and the allegations that they are deceased. That the Petitioner did not file any documents to show the attempt to trace the next of kin neither did they file any document to prove that the Defendants are deceased as claimed.
15. The second application is dated 21/01/2025 filed by the Petitioner who however has chosen to refer to themselves as Plaintiff/Applicant. The application is brought under Section 1A, 1B, 3, 3A and 63 of the *Civil Procedure Act* Cap 21 of the Laws of Kenya, Order 40 Rule 1 and 2 of the Civil Procedure Rules seeking the following orders:
 1. Spent
 2. That pending the hearing and final determination of this application, this Honorable Court be pleased to issue interlocutory injunction order restraining the 1st Defendant by itself, its agents, workers, servants, employees and persons acting on its authority, permission and/or directions from construction or continuing to construct the roads described as Access Road to BARISTA GARDENS over a piece of land known as Plot Mweiga 5956/2/6 and Kigutha Farmers 5839/1 situated within Gitamaiyu Village Rabai in Kiambu County or in any manner whatsoever entering and/or interfering with any part of the said plots.



3. That pending the hearing and final determination of this suit this Honorable Court be pleased to issue interlocutory injunction order restraining the 1st Defendant by itself, its agents, workers, servants, employees and persons acting on its authority, permission and/or directions from construction or continuing to construct the roads described as Access Road to BARISTA GARDENS over a piece of land known as Plot Mweiga 5956/2/6 and Kigutha Farmers 5839/1 situated within Gitamaiyu Village Rabai in Kiambu County or in any manner whatsoever entering and/or interfering with any part of the said plots.
4. That pending the hearing of this application inter parties this Honorable Court be pleased to issue an order prohibiting any dealing with plots known as Mweiga 5956/2/6 and Kigutha 5839/1.
5. That the OCS Kiambu Police Station do assist in the enforcement of the orders of this Court.
6. That costs of this application be provided for.
16. The application is based on the grounds on the face of the application and is supported by the Supporting Affidavit sworn by Dickson Kamau Kimani and the annexures thereto. It is the Plaintiff/Applicant's averment that they are the registered owners of Mweiga 5956/2/6 and Kigutha 5839/1 but that the Respondents have encroached with intention of construction a road.
17. They aver that the Respondents intend to construct the roads described as Access Road to BARISTA GARDENS over the Plaintiff's suit property and known as Plot Mweiga 5956/2/6 and Kigutha Farmers 5839/1 which the Plaintiffs have shown on annexure 'DMK' which is a map of the alleged area and annexure 'B' are photographs of a bush being allegedly cleared by the Respondents.
18. In response the 1st Respondent filed a Replying Affidavit sworn on 29th January 2025. The Replying Affidavit is sworn by Phylis Njeri Macharia the General Manager of the 1st Respondent.
19. The 1st Respondent denies knowing or being involved in the suit property described as Mweiga 596/2/6 and Kigutha Farmers Ltd 5839/1 which they aver is unknown to them and has no nexus or relationship with the parcels of land which are the subject of the Petition. Thus, according to the 1st Respondent, the Petitioner's Motion is misguided and misplaced.
20. Further that despite the claim made of the Petitioner to the above-referenced suit properties, there are no demonstrated proprietary rights over the said parcels. That contrary to the allegations made by the Petitioner, the 1st Respondent has not constructed any access road over the parcels Mweiga 596/2/6 and Kigutha Farmers Ltd 5839/1 which are unknown to the 1st Respondent.
21. It is the 1st Respondent's averment that as per the sworn Affidavit dated 19/04/2023 sworn by James Muriithi Kieu, the 1st Respondent is the owner of the parcel of land LR No. 5956/6 (original No. 5956/2) comprising of 403 acres and that a right of way always existed over the 1st Respondent's land serving the neighbouring parcel of land and annexure 'PNM 2' is a copy of the indenture dated 8/12/1928 and the directional photo containing the names of Sasini PLC as well as the name of the 1st Respondent.
22. The formalization process took place in 2021 granting the right of way over the 1st Respondent's land by way of an agreement with Kigutha Farmers (K) Ltd which is the Company constructing the access road over the suit property as demonstrated and evidenced vide annexure 'PMN3' which is a copy of the agreement. That infact the construction is by Ambi Finch Limited on behalf of Kigutha Farmers Ltd and the 1st Respondent has nothing to do with the construction of the road.



23. It is the 1st Respondent's averment that according to the Petition the land claimed by the Petitioner is unsurveyed in which event there is nothing demonstrative of its boundaries if at all it exists.
24. That since the construction of the road is alleged to have started in 2024 and the Petitioner has no proprietary rights over the 1st Respondent's land there is no irreparable loss that has been demonstrated and if at all which is denied damages would be an adequate compensation.
25. Parties were directed to file written submissions. To the application dated 23/10/2024 the 1st Respondent/Applicant filed submissions dated 13/01/2025 and the Petitioner filed their submissions in opposition to the Notice of Motion dated 20/01/2025. For the Notice of Motion dated 21/01/2025 the Plaintiff/Applicant filed their submissions dated 19/02/2025 and the 1st Respondent filed their submissions in response dated 11/03/2025.
26. On my part I have diligently read and considered all the submissions and the authorities quoted therein which I find very resourceful and helpful. I will start by examining the application dated 23/10/2024.

Analysis and Determination

27. Looking at the Court records, it is indeed true that the matter was last in Court on 19/11/2024 after the application was filed following the failure of Petitioners to attend Court. However, when the matter was mentioned on 30/1/2025 the Petitioner's Counsel attended and he was directed to file his response to the application. At the same time he informed the Court that he had also filed another Application the one dated 21/01/2025. The Court gave directions for filing of submissions for both applications.

1. Despite this being a Constitutional Petition, I think the provisions of Order 17 Rule 2(1) of the Civil Procedure Rules on the dismissal of suits for want of prosecution, are apt to be applied. That law is drawn as follows :-

“In any suit in which no application has been made or step taken by either party for one year, the Court may give notice in writing to the parties to show cause why the suit dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.”

28. The principles to be considered in an Application for dismissal of the suit for want of prosecution were set out in the case of *Ivita vs. Kyumbu* (1984) KLR 441 where the Court held that:

“The test in an application for dismissal of a suit for want of prosecution is whether the delay is prolonged and inexcusable and if it is, can justice be done despite such delay. Justice is justice to both the Plaintiff and the Respondents, so both parties to the suit must be considered and the position of the Judge too. The Respondent must however satisfy the Court that he will be prejudiced if the delay or even that the Plaintiff will be prejudiced. He must show that justice will not be done in the case due to the prolonged delay on the part of the Plaintiff before the Court will exercise its discretion in his favour and dismiss the action for want of prosecution. Thus, even if the delay is prolonged, if the Court is satisfied with the Petitioners excuse for the delay and that justice can still be done to the parties notwithstanding the delay, the action will not be dismissed but will be ordered that it be set down for hearing at the earliest available time.”

29. It is discernible from the above-mentioned provision that the threshold for dismissing a suit for want of prosecution is one year of inactivity of the suit by either party. This matter has been inactive since 2/08/2022 when the 1st Respondent noted the inactive it filed the Notice of Motion dated 23/10/2024. Prior to the filing of the Notice of Motion Application the Court had directed that the Petition be



served upon all the Respondents within 3 days and the Petitioner was directed to file an Affidavit of Service. Further the Petitioner was directed to extract the Order made by the Court and serve all the Respondents within 3 days and file an Affidavit of Service. The Petitioner did not comply.

30. After the filing of the Notice of Motion and the Court issued directions of disposal of the Application dated 19/11/2024 and at the mention to confirm compliance on 30/01/2025 the Petitioner informed the Court it had filed a Notice of Motion dated 21/01/2025 to which the parties were directed to file submissions and a Ruling date reserved.
31. Indeed, the Petition remained dormant for a period of more than one (1) year since it was last in Court. The Petitioner stated that the reason they have not been able to prosecute the matter was because they had tried to trace the next of kin for the 2nd and 3rd Respondents who were deceased. I however note that the Petitioner never presented in Court a Death Certificate or any document that would attest to their claim. Further they never laid before the Court any document to support their claim of having tried to “look for with no avail” as they stated the next of kin of the deceased Respondents.
32. The law allows litigants to apply for substitution before the Court and Courts always indulge litigants to approach Court and give them time for substitution. This application was never made in Court and the issue was raised through an Affidavit with no supporting documentation whatsoever. Worse still after a delay of over two years of the Petition not being prosecuted.
33. It is trite that in determining civil rights and obligations, a person is entitled to a fair, speedy and public hearing before an independent and impartial Court or Tribunal established by law. A “speedy hearing” means conducting a trial within a reasonable time. For the realization of this right, all parties, including the Court, have a responsibility to ensure that proceedings are carried out expeditiously.
34. From the documentation before the Court the Petitioners did not progress the Petition at all since the year 2022, it is my finding that the Petitioners have not given a plausible reason as to why the Petition remained dormant for more than one (1) year.
35. For those reasons, I allow the 1st Respondent’s Application dated 23/10/2024. The Petition dated 22/08/2022 is dismissed with costs to the 1st Respondent for want of prosecution.
36. I see no reason of spending time on the Petitioner’s application dated 21/01/2025 since there is no Petition upon which it is predicated.
37. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13TH DAY OF NOVEMBER, 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Mr. Ng’ang’a for the Petitioner

Mr. Ngugi for the 1st Respondent

2nd – 9th Respondents - Absent

Mr. Melita – Court Assistant

