



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC. CASE NO. 291 OF 2017

MWANGI GACHIENGU.....1ST PLAINTIFF

NDUNG’U GACHIENGU.....2ND PLAINTIFF

JOEL GITHUKU GACHIENGU.....3RD PLAINTIFF

VERSUS

MWAURA GITHUKU (also known as BERNARD MWAURA).....1ST DEFENDANT

SAMUEL MUNGAI KAMAU.....2ND DEFENDANT

RULING

1. In the Application dated 17th August, 2015, the Plaintiffs are seeking for the following orders:

a. That leave be granted for the firm of Wamwayi & Co. Advocates to come on record in the place of Waithera Mwangi & Co. Advocates as suit was dismissed on 1st March, 2012.

b. That the court reviews, discharge and or vacates the orders issued on 1st March, 2012 dismissing the suit for want of prosecution and consequently reinstates the suit dismissed on 1st March, 2012.

2. The Application is based on the grounds that this suit was filed on 25th September, 2007; that the Applicants’ advocate did not inform them that there was a pending Application seeking to have the suit dismissed for want of prosecution and that even after the suit was dismissed, the Applicants were never informed of the dismissal.

3. The Applicants’ advocate finally deponed that the Applicants have a valid claim to the suit land by way of adverse possession and that the mistake of counsel should not be visited on the Applicants.

4. In response, the 2nd Respondent deponed that when the matter came up for notice to show cause why it should not be dismissed for want of prosecution, the Plaintiffs’ advocate sought for time to explain the delay; that although the Plaintiff was given fourteen (14) days to do so, he never responded and that the matter having been dismissed in the year 2012, he sold the suit property on 12th May, 2015 to one Daniel Muhoro Gitahi.

5. The Plaintiffs’ advocate submitted that the Plaintiffs’ previous advocate kept them in the dark about the dismissal of the suit; that the dispute herein involves land which is an emotive subject and that the Plaintiffs have never been served with an eviction notice.

6. This suit was commenced by way of an Originating Summons dated 25th September, 2007. The Originating Summons was then amended on 13th March, 2009. The 2nd Respondent filed a Replying Affidavit on 8th May, 2009.

7. The record shows that when the matter came up for mention on 24th July, 2009, neither the Applicant nor the Respondents’ advocates were in court. The matter was then stood over generally.

8. After the matter was stood over generally on 8th May, 2009, the Applicants’ advocate did not fix it for hearing. Vide a Notice to Show Cause dated 16th December, 2011, the court, on its own motion, invited the Applicants’ advocate to show cause why the suit should not be

dismissed for want of prosecution. The Notice to Show Cause was slated for hearing on 26th January, 2012.

9. On 26th January, 2012, the Applicants' advocate was granted fourteen (14) days within which he was to file an Affidavit in response to the Notice to Show Cause. However, when the matter was mentioned on 1st March, 2012, the Applicants' advocate had not filed the said Affidavit. The court proceeded to dismiss the matter for want of prosecution.

10. Three years later, the Applicants are seeking to reinstate the suit on the ground that their advocate never informed them about the Notice to Show Cause why the suit should not be dismissed for want of prosecution or the dismissal order.

11. The reasons given by the Applicants and their current advocate for the reinstatement of the suit are not only unconvincing, but are not valid. It is trite that a matter once filed in court does not belong to the advocate but to the litigant. It is the responsibility of the litigant to be in constant touch with his advocate on the position of the matter.

12. Where a litigant goes to sleep after filing a suit, he cannot blame his advocate for having not updated him on the position of the matter, or when the matter is dismissed because it has not been prosecuted or fixed for prosecution within one (1) year.

13. Indeed, the Applicants' advocate in this matter was given fourteen (14) days to give reasons why the matter should not be dismissed but he failed to do so. The court was therefore entitled to dismiss the suit for want of prosecution. The failure by the advocate, who is an authorized agent of the Applicants, to inform his clients about the dismissal, cannot be a good reason to vitiate the order of the court.

14. Having failed to make a follow-up on their matter since the year 2009 when the Originating Summons was amended, until the year 2012 when the suit was dismissed, shows that the Applicants were not interested in pursuing their claim within a reasonable period. It does not therefore matter that their advocate never informed them about the proceedings. Litigation must come to an end. In the instant case, litigation came to an end when the suit was dismissed on 1st March, 2012.

15. For those reasons, I dismiss the Application dated 17th August, 2015 but with no order as to costs. This suit stands dismissed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 5TH DAY OF APRIL, 2019.

O.A. ANGOTE

JUDGE