



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC MISC APPL NO. 3 OF 2019

ASHA NASIEKU TEEKA AND DAVID SARUNI TEEKA (Suing as the legal
representatives of the late IBRAHIM TAJEU TEEKA-Deceased)..**RESPONDENTS**

VERSUS

MAREN OLE PILALE.....**APPLICANT**

RULING

(Application seeking to reinstate a motion dismissed for non-attendance; motion being one that sought transfer of a matter from the Magistrate's court Nakuru to the Magistrate's court Narok; counsel stating that he was indisposed when the motion was dismissed and that the counsel he asked to hold brief arrived late in court; no deposition from the counsel mentioned to have been asked to hold brief; matter sought to be transferred already heard and pending judgment; no utility in transferring such a matter; application to reinstate being filed more than 2 months since the motion was dismissed; same filed after unreasonable delay; application dismissed with costs)

1. The application before me is that dated 23 April 2019 filed by the applicant to this miscellaneous motion. The applicant wants orders that its motion dated 8 February 2019, which was dismissed on 26 February 2019, for non-attendance, be reinstated for hearing. The application is opposed.
2. To put matters into context, the applicant filed the motion dated 8 February 2019 seeking orders to have transferred the suit Nakuru Chief Magistrate's Court ELC Case No. 301 of 2008 (clearly meant ELC Case No. 301 of 2018) to the Chief Magistrate's Court in Narok for hearing and disposal. In this suit, the applicant, Maren Ole Pilale, was sued as defendant, whereas the plaintiff is Asha Nasieku Teeka and David Saruni Teeka, suing as the legal representatives of the estate of Ibrahim Tajeu Teeka (deceased). The grounds upon which the motion was founded were that the suit property, Narok Cis-Mara- Ilmashariani/ Moriyo/ 371 is situated in Narok County and that the parties also reside in Narok. It was mentioned that there is a Chief Magistrate's Court in Narok which can handle the dispute.
3. The motion first came before me on 11 February 2019 under certificate of urgency, and I directed that the motion be served and be heard *inter partes*, in the presence of Mr. Meingati, learned counsel for the applicant. On 26 February 2019, Mr. Meingati was absent and neither was the applicant. Mr. Karanja Mbugua, learned counsel for the respondent, applied that the motion be dismissed for failure to prosecute and I duly obliged.
4. In this application, the applicant wants his dismissed motion reinstated for determination. The supporting affidavit is sworn by Mr. Meingati who has deposed *inter alia* that he was indisposed thus could not be available to prosecute the motion. He has deposed that he instructed Mr. Charles Langat advocate to hold his brief and adjourn the matter but he was unfortunately held up in another court and the matter had already been dismissed when he made an appearance.
5. Mr. Karanja Mbugua has sworn a replying affidavit to oppose the motion. He has deposed that there is no judicial utility to be gained by reinstating the motion. He has averred that the suit sought to be transferred is fully heard and is only pending judgment which is due for delivery on 4 September 2019. He believes that it will be moot to reinstate the dismissed motion. He has also pointed out that there is no proof that Mr. Meingati was indisposed and further that this application has been filed over two months since the order of dismissal was made.
6. Mr. Meingati swore a supplementary affidavit where he *inter alia* annexed some documents which show that he was treated at Narok Cottage Hospital on 24 February 2019. He has also deposed that the matter sought to be transferred came up for hearing on 22 May 2019, and that he asked a colleague to take out the matter, but the matter proceeded and the same is now slated for judgment. He believes that the proceedings are thus tainted with impropriety. He also does not believe that the application herein is delayed.

7. I have considered the matter. What is sought to be reinstated is the motion that was dismissed for non-attendance and failure to have it prosecuted. The applicant now seeks the discretion of the court to reinstate it. The application is principally based on the claim that Mr. Meingati was unwell. I have seen some documents which show that Mr. Meingati visited the Narok Cottage Hospital on 24 February 2019. It is not alleged that Mr. Meingati was too ill to communicate, for he himself has deposed that he communicated to Mr. Charles Langat to hold his brief. I however wonder why he failed to call Mr. Karanja Mbugua to inform him that he is indisposed, for if he had done that, it is probable that Mr. Karanja would have indulged him. Be that as it may, I have nothing from Mr. Langat to confirm that he was indeed requested to hold Mr. Meingati's brief to adjourn the matter, and there is also nothing from Mr. Langat to state where he was when the application was dismissed, if indeed he had instructions to hold brief.

8. It has been pointed out by Mr. Karanja that the matter sought to be transferred has already been heard and is only pending judgment and there is no utility in reinstating the motion herein and I do think that there is some weight in that argument. That has not been denied by Mr. Meingati, only that he has complained about the manner in which proceedings were conducted. It does appear that Mr. Meingati wanted the matter adjourned but the court put its foot down and proceeded with the case. I see nothing wrong here, for one cannot approach the court with an application for adjournment and have no "plan B" in case his application is disallowed. Courts are not obligated to grant every application for adjournment, and if a party opts not to proceed with a matter, because his application for adjournment has been rejected, he cannot complain if adverse orders are made against him in his absence. I am personally not sympathetic to a party who opts to walk out of proceedings.

9. It is not disputed that the matter has now been heard and is pending judgment. Even if I am to be moved by the predicament that befell Mr. Meingati, and I am to believe that indeed Mr. Langat was duly instructed but he failed to live up to expectation, what is the use of reinstating a motion that seeks to have transferred a matter that has already been heard and is pending judgment? If I am to allow the motion as prayed, I will not be doing anything to help the administration of justice. In fact, I will only be delaying the matter further, of which I am not prepared to do.

10. I think the fact that the matter has already been heard and is pending judgment militates against me exercising my discretion in favour of reinstating the dismissed motion.

11. I also wonder why this application was not filed immediately Mr. Meingati got to know that his client's application was dismissed. It is apparent that this application was filed more than two months since the motion was dismissed. No explanation has been offered as to why the applicant needed to wait for more than two months to seek a reinstatement of his dismissed motion. I would also have not been moved to exercise my discretion in favour of the applicant because of unreasonable delay.

12. For the above reasons, I dismiss this application with costs. The motion seeking the transfer of the case Nakuru CM ELC No. 301 of 2018 remains dismissed with costs.

12. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 24th day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Isaac Cheruiyot holding brief for Mr. Meingati for the applicant.

No appearance on the part of M/s Karanja Mbugua & Co. for the respondents.

Court Assistants- Janepher Nelima/Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU