REPUBLIC OF KENYA

IN THEENVIRONMENT AND LAND COURT AT MERU

ELC SUIT NO. 143 "B" OF 2010

THURANIRA MUGWIKA alias

GEOFREY THURANIRA MUGWIKA.....PLAINTIFF

VERSUS

HON. ATTORNEY GENERAL.....1ST DEFENDANT

CHIEF LAND REGISTRAR.....2ND DEFENDANT

NORTH IMENTI DISTRICT LANDS

REGISTRAR .....3RD DEFENDANT

PAUL KARAGANIA M/MURUGU.....4TH DEFENDANT

IBORITU MWITHAMBIA Representing

JULIUS MWOBIA M'IMANENE.....5TH DEFENDANT

RULING

1. The Plaintiff/ Applicant herein filed the application dated 18th July 2018 seeking orders to have the suit reinstated, the same having been dismissed on 12th June 2017. The application is supported by the sworn affidavit of **Elijah. K.Ogoti** advocate and on the grounds that the suit involves grabbing of land where one parcel has two (2) titles. This suit was dismissed on 12th June 2017 for want of prosecution. It is averred that the previous counsel was served with the **Notice To Show Cause** but did not attend court nor did he inform the plaintiff to attend and the plaintiff is desirous to proceed with the suit since he is the one on the ground.

Analysis and Determination

2. **Order 17 Rule 2 of the Civil Procedure Rules** provides that;

> ***"2. (1) 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 should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit".***

3. The plaintiff herein instituted this suit via a plaint on 10th September 2010. On 18.11.11, he filed an application praying for temporary orders of injunction over the suit premises herein. The application was set down for hearing lastly on 21.11.2012. That was the last time the matter was in court until the day of dismissal of the suit on 12.6.2017.

4. The Applicant herein admits that a notice to show cause was served upon his prior advocates on record. This is the notice envisaged under Order 17 of the civil procedure rules. The suit herein was dismissed in the year 2017 which is seven years after the suit was instituted. The file record depicts a sorry state of slumber. There was inaction between the years 2012 to 2018 a grace period of six years. The application to reinstate this suit has also been filed one year after the suit herein was dismissed.

5. No reasons have been advanced as to why there was delay in prosecuting the suit, the subsequent application of 18.11.2011 and/or instituting this application. This inaction cannot be heaped upon the then counsel for plaintiff. The plaintiff is the custodian of his case and ought to be diligent enough to ensure that his case is progressing.

6. It is a primary duty of the plaintiff to take steps to progress their case since they are the ones who dragged the defendants to court in the first place. I am minded that dismissal of cases upon summary procedure may be draconian but when the occasion calls for such action, the court should not shy away from taking such measures.

7. In the case of **Bilha Ngonyo Isaac v Kembu Farm Ltd & another & another [2018] eKLR** the court had this to say on issues of delay;

> ***"Pendency of a case in court when it is obvious that the plaintiff is not interested to prosecute it costs time and money to the defendants not to mention mental anguish of having a burden of the case over their shoulders for an unnecessary period of time. In the process, the court becomes the punching bag, leading to loss of confidence with the judicial system due to delays in finalising cases, when in effect and in most of the cases, it is the parties, mostly the plaintiffs, who would take the earliest opportunity to delay finalization by requesting for unnecessary adjournments without clear and convincing reasons. A court should desist from allowing parties to have joy rides over their cases to the prejudice of other parties including the courts….."***

8. In the case of **Tana & Athi Rivers Development Authority vs. Jeremiah Kimigho Mwakio & 3 Others , Mombasa COA, Civil Appeal No. 41 of 2014 (2015) eKLR**, the court made reference to the case of **Mwangi v Kariuki [1999] LLR 2632 (CAK),** where **Shah, JA.** ruled that;

> ***"Mere inaction by counsel should only support a refusal to exercise discretion if coupled with a litigant's careless attitude. The import of this is that while the mistake of counsel is excusable, if it is accompanied by a litigant's carelessness and inactivity, then the refusal by court to exercise discretion in favour of such a party cannot be impugned".***

9. Without any formidable reasons as to why the suit has been pending in court for all these years, and there being no valid reasons for the delay in bringing the application for reinstatement of the suit, I find no reason to interfere with the courts orders of 12.6.2017.

10. The application is therefore without merit and is dismissed. I will, however, not condemn the Applicant to costs as he has already lost his right to be heard. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 25TH DAY OF SEPTEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Ogoti for the applicant

Kiongo for the respondent

Applicant

HON. LUCY. N. MBUGUA

ELC JUDGE