



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 95 OF 2013**

**GLORY NKUENE RUFUS.....1<sup>ST</sup> PLAINTIFF**

**MARTIN KOOME KIAMBATI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**GEORGE KIRIMA alias GEORGE KIRIMA MUGAMBI.....DEFENDANT**

**RULING**

1. This case is old having been filed in the year 2013. However, the dispute appears to be much older.

2. I conducted a pre-trial in this case on 25.4.2019 whereby matter was scheduled for hearing on 17.9.2019. Come the day of 17.9.2019 and defendant informed the court that he will not proceed with this case before the hearing and determination of the Meru case No. 321 of 1993. He averred that he was the plaintiff in case no. 321 of 1993 which has never been heard.

3. In response Ms. Kiome stated that file number 321 of 1993 was last before Judge Njoroge on 6.3.2013, when a ruling was delivered declaring that the said suit had abated. The counsel further stated that the said ruling is one of defendant's documents in his bundle of 16.4.2019 as item no. 28. She also stated that the ruling was delivered in the presence of the present defendant who by then was the plaintiff, and that no appeal was lodged nor was an application for review made.

4. M/s. Kiome further averred that after Judge Njoroge's ruling, the present suit was filed. It was also argued that the current defendant had filed an application for the revocation of the grant which had been issued in respect of the estate of Rufus Kiambati who is the father of the plaintiff. The application was heard by Judge Gikonyo in Meru H.C.C Succ. cause No. 472 of 2013. The application for revocation of the grant was dated 13.7.2016 where defendant had sought to have the subject land herein Kiiirua/Naari/Maitai/59 set aside from the estate and the title to be cancelled in his favour. Judgment in that succession matter was apparently delivered on 14.11.2018 where the matter was dismissed.

**Determination**

5. A perusal of the record indicates that on 30.1.2019 plaintiffs' counsel had prayed that file no. Succession Cause 472/13 and file no. 321 of 1993 be availed during the trial of this matter. The defendant had been in agreement with this prayer. Thereafter, it emerged that file no. 321/1993 could not be found.

**Meru Succession case no. 472/13**

6. I find that way back on 5.12.2016, the issue of the pending succession case was dealt with when Judge Njoroge ruled that it was necessary to have the hearing of this suit deferred until the succession case is determined. It has been submitted for the plaintiff that this suit is now finalized. The file is also apparently available. As such, and pursuant to what the parties had agreed upon on 30.1.2019, this file can be availed during the trial. However, the parties will be requested to point out the content they wished the court to take note of, then thereafter the file shall be transmitted back to the registry.

**Meru HCC No. 321/1993**

7. This matter has apparently abated going by the submissions of plaintiff's counsel. Defendant has denied that the suit has abated. I find that in defendant's bundle of documents dated 16.4.2019, there is annexure marked "GKM28" which is a ruling of Judge Njoroge delivered on 6.3.2013, where it was held as follows;

***"I find that the delay of 8 years without any action being taken to cite the defendant is hopelessly outside any reasonable limit to extend the time in favour of the plaintiff. Abatement is not a mere technicality. It is a fundamental legal issue. In any case***

*rule 24 (4) is clear and laconical. The suit has abated against the defendant. It is so determined.....”.*

8. This is defendant’s own document. How then does he say that the suit has not abated? Going by that ruling of Judge Njoroge, the suit 321/93 no longer exists. Defendant cannot therefore state that he will not proceed with this suit before the determination of the suit no. 321/93. After all, he has not stated whether he applied for review or appeal against the said ruling.

9. I direct that the case proceeds and defendant’s application is hereby dismissed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 27<sup>TH</sup> NOVEMBER, 2019**

**IN THE PRESENCE OF:-**

C/A: Kananu

Mutuma Joel holding brief for Kiome for plaintiff

2<sup>nd</sup> plaintiff

Defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**