



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 372 OF 2012

EMILY KANYI MWANGI.....PLAINTIFF

VERSUS

HILDA NYAMBURA MWANGI.....1ST DEFENDANT

DISTRICT LAND REGISTRAR KAJIADO....2ND DEFENDANT

AND

ALICE NJERI MWANGI.....APPLICANT

RULING

1. The 1st Defendant is seeking to dismiss this suit with costs for want of prosecution vide an Application dated 24th August, 2017.
2. The Application is supported by the Affidavit of the 1st Defendant who has deponed that by way of a Notice of Motion dated 27th February, 2015, the Plaintiff filed an Application for substitution after the original Plaintiff died; that the Application was fixed for hearing on 27th January, 2016 and again on 27th July, 2016 and that the Plaintiff has not taken any other step to prosecute the suit.
3. In response, the Plaintiff deponed that the delay in prosecuting the suit has been caused by the Applicant who has filed in Succession Cause No. 82 of 2014 an Application challenging his *locus standi* to prosecute the suit; that the Application in the succession matter has to be heard first and that the Application should be dismissed with costs.
4. In his submission, the Defendants' advocate submitted that the delay to prosecute this suit has been inordinate notwithstanding the demise of the late Emily Kanyi Mwangi in 26th December, 2013; that the Application dated 27th February, 2015 for substitution has not been prosecuted to date and that the Defendants have been prejudiced with the pendency of this suit.
5. The Plaintiff's advocate on the other hand submitted that the Defendants are challenging the Plaintiff's *locus standi* to prosecute this suit and that in any event, there was no judge in the Environment and Land Court, Machakos for a long time.
6. The record shows that before the current Application was filed on 24th August, 2017, this matter had been mentioned by Okongo J in Nairobi when the Judge directed that the file be transferred to Machakos for further action.
7. Indeed, the reason why the matter had been transferred to Nairobi in the first place was because there was no Environment and Land Court Judge in Machakos.
8. Considering that the file was placed before the Judge on 20th March, 2017, a period of one (1) year had not lapsed before the current Application was filed.
9. The Application to have the suit dismissed for want of prosecution was therefore pre-maturely filed.
10. I therefore dismiss the Application dated 24th August, 2017 with costs.
11. I further direct that the file be transferred to the Environment and Land Court, Kajiado for hearing and disposal.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF FEBRUARY, 2018.

O.A. ANGOTE

JUDGE