



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC PETITION NO. 106 OF 2011

STANLEY MBAYA NKUBITU.....PETITIONER

VERSUS

IBRAHIM KOBIA.....1ST RESPONDENT

JOHANA M'IKAINE M'IRINYA.....2ND RESPONDENT

THE MINISTER FOR LANDS & SETTLEMENT....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. The application dated 15.11.2017 seeks the following orders

(i) Spent.

(ii) That the honourable court be pleased to set aside, review and/or vary the orders dismissing the suit on 15th November, 2017.

(iii) That the honourable court be pleased to reinstate the suit for hearing on merit.

(iv) That cost be provided for

2. The grounds in support of the application are:

(a) That when the matter was coming up for mention on 15th November, 2017 to confirm that the 2nd respondent had filled and served the suit documents, applicant was present in court.

(b) That the 2nd respondent was directed to file and serve the suit papers which he had done.

(c) That when the matter was called applicant's counsel was on his feet before Hon. Justice Gikonyo on Meru H.C.C Election petition 3 of 2017.

(d) That when the said counsel appeared therefore, the suit had been called and dismissed on account of failure of 2nd respondent not filling and serving the suit documents which he had done.

3. The applicant who is the petitioner herein has also filed a replying affidavit in support of his application. He avers that the court is enjoined to administer substantive justice on merit without undue regard to procedural technicalities by virtue of Article 159 (2) (d) of constitution 2010.
4. The 2nd respondent and the Attorney General (3rd and 4th Respondents) had intimated to the court that they would not be opposing this application. However, 1st respondent has opposed the application vide his replying affidavit of 19.2.2018 where he has deponed that the petitioner has never taken any action to prosecute this petition since its inception in 2011.
5. The 1st Respondent further states that the court on 9.10.2017 rightly directed that in the event that the petitioner does not serve the Attorney General who is the 4th Respondent then the petition would stand as dismissed, and come the 15th November 2017 the petitioner had not served the Attorney General, and nor him or his advocate was in court hence the dismissal of the case.
6. 1st Respondent further states that this is a mere land dispute on ownership and has merely been concocted into a petition rather than a normal civil suit.
7. I have considered all the issues raised herein as well as the submissions of the parties. Applicant avers that 1st and 3rd respondent had all been served with the suit papers and hence the dismissal of the suit on 15.11.2017 was unfair and unjust and goes against the rules of natural justice.
8. The orders of the court given on 9.10.2017 directed the petitioner to serve the Attorney General with suit papers failure to which “**The petition will stand as dismissed**”. This order was made in the presence of the counsel holding brief for petitioner. Thereafter, the court gave the next court date as 15.11.2017.
9. On 15.11.2017, Mr. Kieti for the Attorney General stated as follows “***We have never been served, so I associate myself with Muriuki’s sentiments***”. Petitioners counsel was not in court to counter this information. I have taken into account that this suit was filed on 28.7.2011 more than six years ago. I have perused the entire file and I do not see any vigilance on the part of the petitioner to prosecute the matter. The orders given on 9.10.2017 by myself implied that the petitioner was put on notice. This was necessary to ensure that the case was fast tracked as it was part of the backlog of cases in the station. However the records of the court indicate that there was no appearance for the petitioner on 15.11.2017 hence the dismissal of the suit.
10. This court has a constitutional mandate to exercise Judicial Authority in a manner that ensures that Justice is not delayed (Article 159 (2) (b)).
11. One of the factors that has occasioned delay in prosecution of cases is non-compliance with courts orders. Section 1A (3) of the civil procedure Act provides that; “***A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court***”.
12. As rightly submitted by 1st respondent, litigation must come to an end at some point. This being a 2011 matter, petitioner ought to have been at the forefront of ensuring that the matter is prosecuted.
13. I find that the application is not merited. The same is dismissed with costs to 1st respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 16th MAY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Mwiti for petitioner present

Muriuki for 1st respondent present

2nd respondent in person absent

Attorney General for 3rd and 4th respondents absent

Exparte applicant present

HON. LUCY. N. MBUGUA

ELC JUDGE