



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 227 OF 2017

FORMERLY NAKURU ELC CAUSE NO. 227 OF 2010

RUTH WANJIRU NJOROGE.....1ST PLAINTIFF

MUGUGA HIGH SCHOOL.....2ND PLAINTIFF

-VERSUS-

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

THE DISTRICT LAND REGISTRAR, NAROK.....2ND DEFENDANT

JEMIMAH NJERI NJOROGE.....3RD DEFENDANT

KISHANTO OLE SUUJI.....4TH DEFENDANT

RULING

The Application before me is the Plaintiffs/Applicants Notice of Motion dated 15th August, 2017 which was brought under order 12 Rule 2 and 7 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. Wherein the Plaintiff seeks for stay of proceedings and/or consequential orders and that the suit herein that was dismissed be reinstated and the proceedings of the court dated 30th May, 2017 be set aside.

The Application was supported by an Affidavit of Ruth Wanjiru Njoroge and on the grounds that the Plaintiff and her advocate were present in court and stepped out during the break and when the suit was called out the same dismissed for want of prosecution that the order of dismissal is detrimental to the Plaintiff and that the applicant is willing to prosecute the suit expeditiously and the reinstatement of the suit will serve the interest of justice.

The Application was opposed by the 3rd and 4th Defendants who filed a Replying Affidavit and grounds of opposition respectively.

The 3rd Defendant contends that she had filed a Notice for dismissal of the suit on 1st August, 2016 and that the dismissal was proper and procedural and that the Plaintiff's Application does not disclose any grounds for reinstatement of the suit and hence the same ought to be dismissed.

The 4th Defendant on her part contends that the suit herein has been pending for 7 years and the Plaintiff has not taken steps for its prosecution and that there was inordinate delay on the part of the plaintiff to have the suit heard.

The 4th Defendant further averred that the continued pendency of the suit for a period of 7 years was oppressive as he continued to incur costs to defend the suit and no justifiable reason was given by the Plaintiff to have the suit reinstated.

I have read the Application before me and the submissions made by counsel for both the Plaintiff, 3rd and 4th Defendants and the issue for determination is whether the plaintiff herein has laid proper grounds for the court to exercise its discretion to set aside the order for dismissal.

From the pleadings it is not disputed that the suit has been pending in court for 7 years the Plaintiff only reason to have the suit reinstated in that she and her Advocate stepped out of the court room during the break on the 30th May, 2017 and when they came back the suit was dismissed for want of prosecution.

I have perused the court record dated 30th May, 2017 and I find that statement misleading. On that date it was Mr. Yenko Advocate who was holding brief for Ongoto Advocate for the Plaintiff and a Mr. Kilel holding brief for Njuguna for 3rd and 4th defendants. From the record no Application was heard and dismissed infact the court stated:-

“That the Application dated 1st August, 2016 can’t be traced in the court file the matter be mentioned on 12th June, 2017”

When the matter came up for hearing on 12th June, 2017 a copy of the application was supplied to the court and the following order was made.

“The application dated 1st August, 2016 is hereby fixed for hearing on 26th July, 2017”

On the 26th July, 2017 it was only Mr. Biko Advocate who was holding brief for Mr. Njuguna Advocate for the 3rd Defendant who was present. There was no appearance by C.M. Ongoto Advocate as per the record and it was after the address by Mr. Biko Advocate entered the court that there was no appearance by the Respondent/Plaintiff.

The court having satisfied itself that hearing date was taken by consent that the application was heard and the suit dismissed.

From the foregoing it is therefore misleading for the Applicant to state that she was present on 30th May, 2017 when she stepped out with her Advocate when in fact the application was heard on 26th July, 2017.

This being a court of Equity a party must approach it with clean hands. From the above position it is in doubt whether the Applicant is worthy of benefiting from the discretion of the court when she is misleading the court.

From the application the Applicant has not demonstrated why the suit should be reinstated other than the above reasons and in view of the above I find that the Plaintiff’s Application dated 15th August, 2017 is not merited and I therefore dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 26th day of July, 2018

Mohammed Noor Kullow

Judge

26/7/18

In the presence of:-

Okunye holding brief for Plaintiff/Applicant

Mr Malozi holding brief for Ms Kiba for 1st to 3rd defendant

Mr.Otieno holding brief for Ms Ouma for 4th defendant

CA:Chuma

Mohammed Noor Kullow

Judge

26/7/18