



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 131 OF 2003

BIKABHAI MATHURBHAI PATEL.....1ST APPELLANT
CYPRIAN IBURI NGARURO.....2ND APPELLANT
DR. FRANK KAMUNDE MWONGERA.....3RD APPELLANT
HENRY KUTHIMA.....4TH APPELLANT
QUICKLING AUCTIONEERS.....5TH APPELLANT

VERSUS

SAMUEL NTARANGWI MBIRIGA.....1ST RESPONDENT
MWIKA KANAMPIU.....2ND RESPONDENT
JACKSON MWIRIGI.....3RD RESPONDENT
MICKE KIGOTHO.....4TH RESPONDENT
HASSAN HAMED.....5TH RESPONDENT
ADANI IBRAHIM.....6TH RESPONDENT
FRANKLINE KATHURIMA.....7TH RESPONDENT
ANN NYAWIRA.....8TH RESPONDENT

RULING

1. The notice of motion dated 27.4.2018 seeks the following orders;

(i) Spent.

(ii) That the honorable court be pleased to reinstate this suit and the application dated 8th February 2018 and the consequential orders emanating from the same application for hearing and

determination.

- (iii) That the honorable court be pleased to order the applicants annexed submissions as duly filed.
- (iv) That this honourable court be pleased to order for stay of execution of the judgment dated 28th day of September 2017 and delivered by Justice Cheronu pending the hearing and determination of this application inter-partes.
- (v) That this honourable court be pleased to set aside the ruling delivered on 12th day of April 2018 by Lady Justice Mbugua and the consequential orders pending the hearing and determination of this application interpartes.
- (vi) That the honourable court be pleased to grant other order or better relief as shall meet the ends of justice.
- (vii) That cost of this application be provided for.

2. There are grounds in support of the application as well as an affidavit of advocate Munene Kirimi.
3. The application is opposed through the affidavit of B.G Kariuki advocate.
4. I have considered all the rival arguments raised herein. This court has been urged to set aside its rulings of 12.4.2018 whereby the court dismissed applicant's application of 8.2.2018. In the earlier application of 8.2.2018, applicants who are respondents in this suit were seeking for a stay of execution of the court's judgment of 28.9.2017 whereby the appeal was successful.
5. When the application of 8.2.2018 initially came before Judge Cheronu on 14.2.2018, directions were given for the application to be heard on 19.2.2018 (interpartes). In the intervening period, parties were to file further or other affidavits.
6. On 19.2.2018 the court gave directions for the application to be heard by way of written submissions whereby applicants were to file their submissions within 14 days ***"failure to which the application would stand as dismissed"***. These directions were given in the presence of counsel for the applicant, (Mr. Munene).
7. By giving such directions the court was already putting the applicants on notice regarding the fate which should befall their matter if there was non-compliance with the court's orders. Come 12.4.2018 and no submissions had been filed by the applicant, nor was their advocate present in court.
8. This suit was filed way back in 2003, which means that it has been in the court's arena for the last 15 years. Why? Considering that this is an appeal, then there is no reasonable explanation as to why the suit has marked time for all these years. I have taken judicial notice that case back log is a menace which has tainted the image of Judiciary. Non-compliance with court's orders and directions like in this case is one of the causes of such backlog. A court of law has a constitutional mandate under article 159 (2) (b) to deal with this kind of menace.
9. It is also not lost to this court that this appeal was in respect of an interlocutory injunction which means that the matter was not heard substantially.
10. I find that the application dated 27.4.2018 is unmerited and the same is dismissed with costs to appellants. This suit is marked as finalized and the lower court file is to be remitted back to the Chief Magistrate's court for determination of the suit forth with.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 11TH DAY OF JULY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Muchomba for applicant present

Miss Mwiraria holding brief for B.G Kariuki for Respondents present

HON. LUCY. N. MBUGUA

ELC JUDGE