



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

HCC NO. 122 OF 2002

GIRISH VAGHJI SHAH.....1ST PLAINTIFF

VIPUL PATEL.....2ND PLAINTIFF

VERSUS

BEN NGUNYANGI IRAGU.....1ST DEFENDANT

LAND REGISTRAR, NAKURU.....2ND DEFENDANT

CONSOLIDATED WITH NAKURU HCC No. 317 OF 2011

LUCY NJERI NGUNYANGI.....1ST PLAINTIFF

MAXWELL MUNENE.....2ND PLAINTIFF

ESTHER WANGUI.....3RD PLAINTIFF

JENIPHER WANGARI.....4TH PLAINTIFF

VERSUS

THE CHIEF LAND REGISTRAR.....DEFENDANT

RULING

1. This is a ruling in respect of Notice of Motion dated 30th May 2016 filed by Lucy Njeri Ngunyangi, Maxwell Munene, Esther Wangari and Jenipher Wangari, all of whom are plaintiffs in Nakuru HCCC No. 317 of 2011. They seek the following orders:

a) This suit be dismissed for want of prosecution.

b) The judgment and decree in case No. 371 of 2011 in favour of the applicants be re-instated.

c) Costs of this application be provided for.

2. The application is brought inter alia under Order 17 rule 2 of the Civil Procedure Rules and is supported by an affidavit sworn by Lucy Njeri Ngunyangi. Her main complaint is that the plaintiffs in this case who are the interested parties in HCCC No. 317 of 2011 have not taken any step to prosecute this

case since 8th October 2007 when the matter was last in court.

3. The application is opposed by the plaintiffs through a replying affidavit sworn on 30th November 2017 by Joseph Chege Muthama. He deposed that the matter has been severally listed. Among others, the matter came up on 16th March 2015 when the court ordered that HCCC No. 317/2011 be stayed. The matter was again listed for mention on 2nd February 2016 after which the applicants filed the present application on 30th May 2016. He further deposed that the plaintiffs have been keen to prosecute the matter but there has been a delay owing to shortage of dates at the registry and partly owing to the current pending application.

4. The application was heard by way of written submissions. The applicants filed submissions on 11th December 2017 while the plaintiffs filed submissions on 9th March 2018.

5. I have considered the application, the affidavits filed and the submissions.

6. The application is brought under **Order 17 rule 2** of the **Civil Procedure Rules** provides:

2. (1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.

(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.

(3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.

7. A perusal of the record herein reveals that on 10th February 2015, my brother Munyao J. ordered consolidation of Nakuru HCCC 122 of 2002 with Nakuru HCCC 317 of 2011. On 16th March 2015, my brother ordered stay of Nakuru HCCC 317 of 2011 pending outcome of Nakuru HCCC 122 of 2002. Subsequently, M/s Konosi & Company Advocates filed a Certificate of Urgency on 22nd October 2015 seeking a hearing date for the suit and citing its age. The Certificate of Urgency was placed before my brother who ordered that the matter be mentioned on 2nd February 2016.

8. Come 2nd February 2016, there was no appearance by any of the parties. The matter was stood over generally. Slightly less than 4 months later, the application presently before the court was filed.

9. The rule under which the application is brought empowers the court to dismiss a suit in which no application has been made or step taken by either party for one year. In this case, as has been shown by the sequence of events narrated above, the present application was filed hardly 4 months after the matter was last listed. Even if one were to argue that on that last date when the matter was before the court on 2nd February 2016, there was no appearance by the plaintiffs, the record clearly shows that counsel for the plaintiffs appeared before the court on 22nd October 2015 seeking a hearing date for the suit. Mathematically, from 22nd October 2015 to 30th May 2016 when the present application was filed, a period of one year had not lapsed.

10. Prayer (b) in the application was for an order that judgment and decree in case No. 371 of 2011 in favour of the applicants be re-instated. The judgment was set aside by the court in a considered ruling. I am afraid it cannot be reinstated in the manner sought. The applicants must prove their case at a hearing, unless of course parties reach a settlement which is duly endorsed by the court.

11. In view of the foregoing discussion, I see no merit in Notice of Motion dated 30th May 2016. It is dismissed with costs to the plaintiffs.

Dated, signed and delivered in open court at Nakuru this 12th day of October 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Wangari holding brief for Mr Mindo for the applicants

Mr Cheche holding brief for Mr Konosi for the respondents

Court Assistants: Gichaba & Lotkomoi