



Kagotho & 2 others v Maina and Maina (The Administrators of the Estate of Francis Gichamba Maina (Deceased) & 2 others (Environment & Land Case 600 of 2014) [2017] KEELC 3862 (KLR) (4 April 2017) (Ruling)

Beatrice Wambui Kagotho & another v Nyawira Wangechi Maina & 3 others [2017] eKLR

Neutral citation: [2017] KEELC 3862 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 600 OF 2014

AK BOR, J

APRIL 4, 2017

N THE MATTER OF: THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ARTICLES 2(6), 22(2)(A), 22(3)(D), 23(1), 23(3) AND 165(3) (A) (D)(I)

(II) OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF: ARTICLES 10, 20, 21, 22
AND 23 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 26, 27, 28, 29, 31, 35, 41(1)(A)(B)(3)(4), 43(1) (B)(C)
(F), 45(1), 47(1)(2), 50(1), 53(C)(D)(2) AND 57 (B)(C) OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF: SOCIAL JUSTICE

AND

IN THE MATTER OF: LAND ACQUISITION

AND

IN THE MATTER OF: THE DOCTRINE OF LEGITIMATE EXPECTATION

AND

IN THE MATTER OF: THE LIMITATION OF ACTIONS ACT, 2012

AND

IN THE MATTER OF: THE LAND REGISTRATION ACT, 2012



AND

IN THE MATTER OF: THE LAND ACT, 2012

AND

IN THE MATTER OF: THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948 AND
THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA (SUPERVISORY
JURISDICTION, PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND
FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE
RULES, 2006 AS READ WITH CLAUSE 19 OF THE CONSTITUTION OF
KENYA, TRANSITIONAL CLAUSES AND CONSEQUENTIAL PROVISIONS
OF THE SCHEDULE TO THE CONSTITUTION

BETWEEN

BEATRICE WAMBUI KAGOTHO 1ST PETITIONER
MOSES CHEGE MAGUA 2ND PETITIONER
DAVID NGIGE 3RD PETITIONER

AND

NYAWIRA WANGECHI MAINA AND WANGAI MUHIU MAINA (THE
ADMINISTRATORS OF THE ESTATE OF FRANCIS GICHAMBA MAINA
(DECEASED) 1ST RESPONDENT
THE CHIEF REGISTRAR 2ND RESPONDENT
THE HON. ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. Through the application dated 25th July, 2016, the 1st Respondent seeks to have the Petition in this matter dismissed for want of prosecution and the costs of the petition. The application is brought under Article 159(2) of *the Constitution* of Kenya and Rule 3(5), 3(6) and 3(8) of *the Constitution* of Kenya (Protection of Fundamental Rights and Freedoms) Practice and Procedure Rules, 2013. The grounds on which the application is anchored are that the Petitioners have not taken any steps to prosecute their matter since 4th November, 2014 when it was last adjourned generally; the delay is unexplained, prolonged and inexcusable and, that the 1st Respondent is prejudiced by the existence of a stagnant suit.
2. The application is supported by the affidavit of Muhiu Wangai Maina, one of the administrators of the estate of the Late Francis Gichamba Maina. The administrators of the Estate of the deceased are required to liquidate the said estate and apportion the proceeds to the beneficiaries of the estate.
3. The Petitioners entered into separate leases with Francis Gichamba Maina on 13th May 2009 over specific portions of the business premises erected on L.R. No. 209/138/51 situated along Duruma



- Road, Nairobi (“the Suit Property”). Francis Gichamba Maina died on 18th September 2009. The leases over the Suit Property determined by effluxion of time on 31st March, 2014.
4. Through their lawyers, the Administrators of the estate of Francis Gichamba Maina issued a notice on 29th March 2014 to the Petitioners informing them that the Suit Property had been sold and that this firm of Advocates had been directed not to take any action in renewing the leases. The letter further stated that the tenants would continue to occupy the Suit Property for four months without paying rent and that the new owners would contact the tenants on the way forward within that period.
 5. Being aggrieved by this notice, the Petitioners filed this Petition in the Constitutional and Human Rights Division of the High Court on 10th April, 2014, seeking declarations that the Respondents have a duty to respect and fulfill the Petitioners rights in the Suit Property which cannot be abrogated; that evicting the Petitioners from the Suit Property would violate their fundamental rights; and, that the Petitioners have a legitimate expectation to be granted the first option to purchase the Suit Property as and when it becomes available for sale. The Petition also prayed for a permanent injunction to restrain the 1st Respondent from selling the Suit Property to any person other than the Petitioners. It is not clear why the Chief Lands Registrar and the Honourable Attorney General were made parties to this dispute arising from a lease between the Petitioners and the Administrators of the estate of the deceased landlord.
 6. At the time of filing the Petition, the Petitioners filed an application for a temporary injunction to restrain the 1st Respondent from disposing of or evicting the Petitioners until the suit is heard and determined. The Court certified that application urgent and directed that it would be heard during the vacation. That application was never heard and no injunctive orders were issued. On 16th April 2014 the 1st Respondent filed an application seeking to strike out the Petition for not disclosing any violation of the Petitioner’s rights by the 1st Respondent. This application was never heard.
 7. The Petition was transferred from the Constitutional and Human Rights Division to the Environment and Land Court Division on 15th May, 2014. On 28th July 2014 when the matter came up for directions on the hearing of the 1st Respondent’s application and the Petitioner’s application dated 9th April 2014 seeking injunctive relief, the Court directed that parties would highlight their submissions on 23rd September 2014. On 23rd September 2014, the Court directed that the status quo prevailing would be maintained until 4th November 2014 when parties would highlight their Submissions. On 4th November 2014, the Court directed parties to take a mention date at the registry for purposes of taking a ruling date in the new term.
 8. The 1st Respondent’s advocates wrote to the Petitioners’ Advocates on 14th October 2014, informing them that the Suit Property had been transferred to the beneficiaries of the Estate of Francis Maina in July 2014. The Respondent’s Advocates returned the cheques the Petitioners Advocates’ had forwarded to them vide the same letter.
 9. On 5th November 2016, the Petitioners filed an application seeking to restrain the 1st Respondent from disposing of or selling the Suit Property until the matter is determined by the Court. This must have been prompted by the 1st Respondent’s Advocates letter returning the cheques forwarded on account of rent and which also notified the Petitioner’s Advocates that the Suit Property had been sold and transferred to a third party. There is no evidence that that application was ever served on the 1st Respondent. After the Court declined to certify this application as urgent on 5th November 2016, the Petitioners did not fix this second application for injunction for hearing.
 10. The present application was served on the Petitioners Advocates on 1st August 2016. The 1st Respondent argues that this case has been overtaken by events since the Suit Property has already been



transmitted to the beneficiaries of the Estate of the late Francis Gichamba Maina. The 1st Respondent avers that the Petitioners were offered new leases by the new owners of the Suit Property.

11. The Petitioners did not file any response to the application but their Advocate made oral submissions urging the court to be slow in dismissing the petition while pointing out that the Petitioners had filed submissions in respect of the Petition. The main contention in those submissions is that Francis Maina (deceased) with whom the Petitioners entered into the lease had assured the Petitioners that at the end of the lease term they would be considered if the Suit Property were to be sold. The Petitioners aver that by selling the Suit Property without informing the Petitioners, the 1st Respondent breached the legitimate expectation of the Petitioners that they will continue to occupy the premises. The Petitioners contended that based on the expectation that they would continue to occupy the Suit Property, they purchased goods worth Kshs. 8 Million and it would be virtually difficult to dispose of the stock within the four months given by the 1st Respondent.
12. The Court has taken time to set out in detail the chronology of events in this matter to show the conduct of the Petitioners in ensuring a speedy resolution of this dispute.
13. The question for determination is whether this suit ought to be dismissed for want of prosecution or should it be allowed to continue pending indefinitely in court. The Suit Property has been transferred to the beneficiaries of the Estate of the Late Francis Gichamba Maina and the Petitioners were offered new leases.
14. In exercising judicial authority, the Court has to bear in mind the principle that justice should not be delayed as stipulated by Article 159 (2) of *the Constitution*. The Court has a duty to further the overriding objective of facilitating the just, expeditious, proportionate and affordable resolution of disputes by handling matters before it in a manner that attains the aims of efficient use of the available judicial resources and timely disposal of proceedings in the court. The duty of the court under *the Constitution* is to hear and determine matters without delay.
15. After considering the application, the court is of the view that the Petitioners have lost interest in the matter. They have not taken steps to prosecute the case since 5th November 2014 when the court declined to certify their application for injunctive orders to restrain the 1st Respondent from selling or leasing the Suit Property. It will serve no useful purpose to have the petition pending in court indefinitely.
16. The application is allowed, the Petition is dismissed with costs to the Respondents.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF APRIL, 2017.

K. BOR

JUDGE

In the presence of: -

No appearance for the Petitioners

Ms. Olbara for the 1st Respondent

Mr. V. Owuor- Court Assistant

