



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 287 OF 2010

CECILIA GAKUI KINYUA.....1ST PLAINTIFF/ RESPONDENT

ANNE MUTHONI KANYEKI.....2ND PLAINTIFF/RESPONDENT

VERSUS

NYAGA GICHENGE1ST DEFENDANT/APPLICANT

VIRGINIAH NJOKI NYAGA.....2ND DEFENDANT/APPLICANT

ANN WAMAITHA MURIITHI.....3RD DEFENDANT/APPLICANT

REGISTRAR OF TITLES, KIRINYAGA.....4TH DEFENDANT/APPLICANT

RULING

Coming up before me for determination is the Notice of Motion dated 16th December 2014 in which the Plaintiffs/Applicants seek for the following orders:

1. That the court do set aside the orders made on 20th December 2013 dismissing this suit if the same was not set down for hearing within 60 days from that date;
2. That the court do enlarge the time within which the Plaintiffs/Applicants should substitute the 1st Plaintiff;
3. That the court do issue an order of temporary injunction restraining the 2nd , 3rd and 4th Defendants/Respondents from interfering with, trespassing, encroaching upon, entering, developing and alienating or disposing the suit property.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the 2nd Plaintiff/Applicant, Anne Muthoni Kanyeki, sworn on 16th December 2013 in which she averred that on 30th January 2013, the Defendants filed a Notice of Motion application seeking that the suit herein be dismissed for want of prosecution. She averred further that the Plaintiffs opposed the said application by filing Grounds of Opposition dated 8th May 2013. She further stated that after canvassing

the said application before this court, the court directed that a ruling would be delivered on 8th November 2013. She added that on 8th November 2013, the ruling was not delivered and the court directed that the same would be delivered on notice. She further indicated that no ruling notice was ever served upon them. She further averred that since February 2014, she would frequent the ELC Registry to enquire when the ruling would be delivered and that she was advised that the ruling was not ready and they should wait to be served with a ruling notice. She added that she later came to learn that the ruling had been delivered on 20th December 2013. She further stated that she was shocked to learn that the court had directed in the said ruling that the Plaintiffs should set down the suit herein for hearing within 60 days from 20th December 2013, failure to which the suit would stand dismissed. She further stated that the court further directed that the 1st Plaintiff be substituted with a legal substitute without further delay. She averred that the period given to the Plaintiffs had lapsed even before they had sight of the ruling. She asserted that no notice of the ruling was ever served upon them or their advocates and in the circumstances requested the court to set aside the orders made on 20th December 2013 by allowing the 1st Plaintiff to be substituted and further enlarge time to allow the Plaintiffs to prosecute this suit to its conclusion.

The Application is contested. The 1st Defendant/Respondent, Nyaga Gichenge, filed his Replying Affidavit sworn on 7th July 2015 in which he averred that there is nothing to revive in this matter as the court delivered a sound ruling on 20th December 2013. He pointed out that it is one year after the delivery of the said ruling that the Applicant has now gone to court to seek for the same to be set aside. He added that the Applicants have the habit of going to sleep over this matter as they had been enjoying orders earlier issued on 19th January 2012. He added that all notices over delivery of judgments and rulings are clearly hanged on the court's notice board for public attention and as such the Applicants should not be heard to claim that they were not notified. He also stated that the Applicant's Advocates have their offices in Nairobi where most of their cases are. On those grounds, he sought for this Application to be dismissed.

The issue I am called upon to determine is whether or not to set aside the dismissal of this suit as ordered in the Ruling of this court which was delivered on 20th December 2013. The court's decision on this issue revolves on whether or not the Plaintiffs/Applicants were duly served with the ruling notice informing them of the impending delivery of the Ruling on 20th December 2013. I agree with the position given by the Plaintiffs/Applicants that this court stated that the ruling would be delivered on 8th November 2013. On 8th November 2013, the court stated that the ruling would be delivered on notice. The Ruling Notice dated 16th December 2013 in which the court notified the parties that the ruling would be delivered on 20th December 2013 appears to have not been served on the parties. The Notice is there but there is no stamp of receipt of the same by either of the parties to this suit. Come 20th December 2013, this court proceeded to deliver the ruling in the absence of all the parties to this suit. In that ruling, this court gave certain timelines which were to be observed by the Plaintiffs/Applicants, specifically that the Plaintiffs/Applicants had 60 days from that date to set this suit down for hearing failing which the suit stood dismissed. I am satisfied with the explanation given by the Plaintiffs/Applicants that they were not notified of the delivery of the ruling. On those grounds, I hereby review the ruling delivered on 20th December 2013 by setting aside the order to the Plaintiffs to set this suit down for hearing within 60 days from that day failing which this suit stands dismissed. This court revives this suit and directs the Plaintiffs/Applicants to set this suit down for hearing within a period of 60 days from today's date. The 2nd Plaintiff has also been allowed to substitute the 1st Plaintiff within that period of 60 days from today's date. I decline to issue the order of temporary injunction sought by the Plaintiffs/Applicants.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH

DAY OF MAY 2017.

MARY M. GITUMBI

JUDGE