



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 50 OF 2000

JUSTUS NTUITU.....PLAINTIFF

VERSUS

M'MWIRICHIA KAUMBUTHU.....DEFENDANT

RULING

1. The Notice of Motion dated 27th April 2016 seeks the following orders:-

1. THAT the Honourable Court be pleased to certify this matter as urgent and service be dispensed with at the first instance.
2. THAT the Honourable Court be pleased to review and or set aside its orders issued on 6/7/2015, and reinstate this matter for hearing.
3. THAT costs of this application be provided for.

2. The application is based on the following grounds:-

- a. THAT the firm of Charles Kariuki & Kiome Associates Advocates was not served with a Notice to show cause.
- b. THAT all the witnesses had testified except for one who is the expert witness the district land adjudication officer.
- c. THAT the matter was not dormant for it was lastly in Court on 25/5/2014 before Judge Lessit, who directed that dates be taken at the registry for mention for directions on how to proceed with the main suit.
- d. THAT on 23rd January 2015 applicant's Advocate on record wrote a letter to the firm of Mithiga & Kariuki Advovates to meet their representative on 12th February 2015 with a view of fixing a hearing date.
- e. THAT the said application came up for mention on 6/07/2015 however the counsel for the applicant was in another Court which led to the matter being dismissed.

3. The application is supported by the Affidavit of JUSTUS NTUITU sworn on 22nd April 2015, where he states:

1. That the matter had come up for hearing on 27/5/14 before Justice Lessit who then gave directions on how the case was to be handled.
2. That the matter had come up for mention on 6/07/2015 where the orders were issued to dismiss the suit.
3. That indeed the orders of 6/07/2015 are to my detriment, and are unfair and not equitable in the circumstances and the same can be reviewed by the Honorable court so as to safeguard the best interest of the parties in question.
4. That indeed all the witnesses here testified apart from the expert, (district land adjudication officer).
5. That the matter has not been dormant for it was in court lastly on 27/5/2014 before Justice Lessit who gave a mention date for directions on how to proceed with the main suit.
6. That the matter came up for mention on 6/07/2014 and that applicant's Advocate on record CHARLES KARIUKI & KIOME

ASSOCIATES ADVOCATES was at the High Court at the time.

7. That on 23rd January, 2015 applicant's Advocate on record wrote to the defendant's advocates for fixing a hearing date on 12th February 2015, but the Court file was not traced.

4. Respondent has sworn an affidavit opposing the application and he states that.

i. That the year of origin of the case was 1996 before the suit was transferred to High Court as No. 50 of 2000, and the case is over 20 years old.

ii. Applicant did not take action in the suit hence the dismissal.

iii. That even the present application has taken long to prosecute.

iv. That the application is a mere sham, frivolous and is vexatious, and is an abuse of the Court's processes.

5. I find that on 25.5.14, Judge Lessit referred this matter to Judge Makau for directions. On the same day, Judge Makau gave orders that **"let further hearing date be taken in the next term"**

No such date was however taken.

6. The averments of the applicant (in paragraph 8 of his affidavit are that the court file had gone missing (See JN1).

There is however no evidence to show that applicant communicated with the court (perhaps through the DR or EO) to state that they were unable to fix a date because the court file was missing.

The status of the file remained unchanged from 25.5.14 to 6.7.15. That period was certainly one of dormancy.

7. I therefore find that no plausible explanation has been given as to why the orders of 25.5.14 were not complied with.

8. After dismissal of the suit on 6.7.15, it took the applicant almost a year to file the application of 5.5.16. Even then, the applicant has displayed a lack lustre attitude in the prosecution of this application.

On 13.7.17, this court gave directions that the application be heard by way of written submissions and the applicant was to file the said submissions within 30 days. This order was not complied with and on 3.10.17, the applicant's counsel was asking for five days to file submissions which request the court declined.

9. Litigation has to come to a closure at some point. This court has a mandate to ensure that Justice is not delayed (See Article 159 of the Constitution).

Though this case was filed in the year 2000, it is quite apparent that the dispute was in the litigation arena way back in 1996.

10. I decline to revive this case. The application to have the suit reinstated is hereby dismissed with costs to the Respondent.

The suit stands as dismissed.

DELIVERED, DATED AND SIGNED AT MERU THIS 24TH DAY OF OCTOBER, 2017 IN THE PRESENCE OF:-

CA: Janet

Justus Ntuitu- Plaintiff present

M'Mwirichia Kaumbuthu –Defendant present

Hon. L. N. MBUGUA

ELC JUDGE