



Gitau v Investments; Mugunyu & 8 others (Interested Parties) (Environment and Land Appeal 120 of 2018) [2024] KEELC 795 (KLR) (16 February 2024) (Ruling)

Neutral citation: [2024] KEELC 795 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 120 OF 2018**

JG KEMEI, J

FEBRUARY 16, 2024

BETWEEN

JAMES THENDU GITAU PLAINTIFF

AND

WACAROL INVESTMENTS DEFENDANT

AND

KARANJA MUGUNYU INTERESTED PARTY

DAVID WAINAINA MAINA INTERESTED PARTY

JOSEPH NJOROGE NYAMWEA INTERESTED PARTY

BERNARD KAMAU GITAU INTERESTED PARTY

MWANGI INTERESTED PARTY

KARIUKI INTERESTED PARTY

WA DENNIS INTERESTED PARTY

BABA KARIUKI INTERESTED PARTY

GITAU INTERESTED PARTY

RULING

1. On the 9/11/2022 the Plaintiff/Applicant moved the Court vide Notice of Motion dated 8/11/2022 seeking orders of reinstatement of suit dismissed on 2/6/2022.
2. The Application is anchored on the grounds attached thereto and the Supporting Affidavit of the Applicant sworn on the 8/11/2022.



3. The deponent states that the matter was scheduled for pretrial directions on 29/11/2021 when the Deputy Registrar directed parties to comply with Order 11 before 23/12/2021. That come 23/12/2021 the Court was not sitting and parties were informed that they would be served with notices giving new dates. That notwithstanding no notices were issued and only learned on 7/11/2022 that the suit had been dismissed.
4. The Applicant was emphatic that he is desirous in prosecuting the suit to its logical conclusion and urged the Court to reinstate it so that it may be heard on merit. That the interests of justice shall be served if the matter is heard on merits to forestall a travesty of justice.
5. Despite service of the Application upon the Respondent, the same is not opposed.
6. On the 27/9/2023 the Applicant's Counsel Prof. Kiama argued the Application orally in Court.
7. Having heard and considered the Application the issue for determination is whether it is merited.
8. This suit was filed on 17/4/2018. The suit proceeded by way of formal proof despite service of Summons to enter appearance upon the Respondents.
9. Upon hearing the matter the Court delivered its Ruling on 15/10/2020.
10. However on 14/10/2022 parties entered into a consent to set aside the Judgment rendered on 15/10/2020 to enable the parties to be heard on merit.
11. What followed were attempts to comply with Order 11 of the Civil Procedure Rules in preparation of the hearing. The record attests that on 29/11/2021 the Defendant was yet to comply. On 3/2/2022 none of the parties were present in Court. The Court granted seven (7) days to the parties to comply in default the pleadings would be expunged from the record. Equally the Court set the date for hearing as 2/6/2022. The Court also directed that the parties be served through the Registry.
12. At the date for hearing on 2/6/2022 parties were absent and the Court proceeded to dismiss the suit for non-attendance / want of prosecution.
13. It took the Plaintiffs until 8/11/2022 to realize that the suit had been dismissed, a period of two (2) months. The Court finds that the period is not inordinate hence the Application to reinstate has been made on time in the circumstances.
14. The Court has reviewed the record and it is clear that no hearing notice was served on the parties. In line with the right to be heard as expressed in Article 50 of Constitution of Kenya, the Court finds that the interests of justice will be served if the Application is granted. Further the right to be heard is a the Constitutional edict that this Court is mandated to preserve.
15. In the upshot the Application is granted on terms:-
 - a. The Applicant to set the suit for hearing within fifteen (15) days from the date hereof in default the suit shall stand dismissed automatically without any further orders from the Court.
16. I make no orders as to costs.
17. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 16TH DAY OF FEBRUARY, 2024 VIA MICROSOFT TEAMS.

J G KEMEI
JUDGE



Delivered online in the presence of;

Plaintiff/Applicant – Absent but served

Defendant/Respondent – Absent but served

1st – 8th Interested Parties – Absent but served

Court Assistants – Phyllis/Oliver

