



**Soi v Soi & 2 others (Environment & Land Case 50 of 2018)
[2024] KEELC 4830 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4830 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 50 OF 2018
LA OMOLLO, J
JUNE 20, 2024**

BETWEEN

KIPKORIR ARAP SOI PLAINTIFF

AND

JANE CHEMUTAI SOI 1ST DEFENDANT

CHEMUKE W/O RUGUT 2ND DEFENDANT

LAND REGISTRAR, BOMET COUNTY 3RD DEFENDANT

RULING

Introduction.

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 11th March, 2024. The said application is expressed to be brought under Order 12 Rule 7 & Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act and Article 159 of the Constitution of Kenya.
2. The application seeks the following orders;
 - a. That the Honorable Court be pleased to grant leave to the firm of M/S Geoffrey Otieno & Company Advocates to come on record as Advocates for the Plaintiff/Applicant herein in place of the firm of M/s Fransisca C.B & Company Advocates.
 - b. That the Honorable Court be pleased to set aside its order made on the 19th December, 2023 dismissing the Applicant's suit for want of prosecution.
 - c. That the Honorable Court be pleased to re-instate the Applicant's suit commenced by way of the (sic) Plaint dated the 13th June, 2018.
 - d. That the costs of this application be provided for.



3. The application is based on the grounds on its face and the supporting Affidavit sworn by one Kipkorir Arap Soi on 11th March, 2024.

Factual Background.

4. The Plaintiff/Applicant commenced the present proceedings vide the Complaint dated 13th June, 2018. He seeks the following orders;
 - a. An Order cancelling the sub-division, the transfer and registration of land parcel No. Kericho/Kipsonoi S.S/587, Kericho/Kipsonoi S.S/600 and Kericho/Kipsonoi S.S/601 and title be reverted to Kericho/Kipsonoi/S.S/320 in the name of the Plaintiff.
 - b. An eviction order against the 1st and 2nd Defendants by themselves, agents, servants, employees or any other party acting on their behalf to vacate LR No. Kericho/Kipsonoi S.S/320 now registered as Kericho/Kipsonoi/600, Kericho/Kipsonoi S.S/601 and Kericho/Kipsonoi S.S 587.
 - c. An order of permanent injunction restraining the 1st and 2nd Defendant by themselves, agents, servants, employees or any other party through whom they may be acting from interfering with, subdividing, selling, transferring, assigning, destroying a fence thereon, farming thereon, erecting structures thereon, chasing away the Plaintiff's workers and or doing any other act which is prejudicial to the Plaintiff's proprietary interests on LR No. Kericho/Kipsonoi S.S/320 now registered as Kericho/Kipsonoi/600, Kericho/Kipsonoi S.S 601 and Kericho/Kipsonoi S.S 587.
 - d. Costs and interest.
 - e. Any other relief the court may deem fit and just to grant.
5. The 1st and 2nd Defendants/Respondents filed their Statement of Defence on 27th August, 2018 wherein they deny the Plaintiff/Applicant's averments in the Complaint and seek that the suit be dismissed with costs.
6. The application under consideration first came up for hearing on 13th March, 2024 when the court gave directions that it be served upon the Defendants/Respondents.
7. The application came up for further hearing on 7th May, 2024 when it was reserved for ruling.

The Plaintiff/applicant's Contention.

8. The Plaintiff/Applicant contends that he instructed the firm of Mitey Tonui & Company Advocates to commence the present proceedings on his behalf in which he seeks orders that the Defendants/Respondents be evicted from land parcel No. Kericho/Kipsonoi/320.
9. The Plaintiff/Applicant also contends that on 19th December, 2023 this suit came up for mention and was dismissed for non-attendance and/or for want of prosecution.
10. The Plaintiff/Applicant further contends that his previous Advocates on record failed to notify him of the said mention date which failure was unfortunate as it resulted in adverse orders being made against him.
11. It is his contention that the said 'mix up' should not be visited upon him since he did not participate in the events leading to the dismissal of the suit and has at all times been diligent and vigilant in prosecuting his case before this court.



12. It is also his contention that he has not in any way sought to deliberately delay or obstruct the course of justice.
13. The Plaintiff/Applicant contends that the dismissal of the suit stands to negatively impact him as he stands to suffer great loss and damage should the suit not be reinstated.
14. The Plaintiff/Applicant also contends that the Defendants/Respondents will not suffer any prejudice if the suit is reinstated and heard on merit.
15. He ends his deposition by stating that it is in the interest of justice and fairness that this court exercises its discretion in his favor and grant the orders sought.
16. Despite service, no response was filed to the application. None of the parties filed submissions.

Analysis And Determination.

17. After considering the application, the only issue that arises for determination is whether the order made on 19th December, 2023 should be set aside and the Plaintiff/Applicant's suit reinstated.
18. The Plaintiff/Applicant is seeking that the court sets aside the orders issued on 19th December, 2023 and the suit be reinstated for hearing on merit. The orders issued on 19th December 2023 had the effect of dismissing this suit for want of prosecution.
19. A perusal of the court record shows that on 19th December, 2023 the court made the following orders;

“On 16th December, 2021, the court had been informed that the 2nd Defendant had since passed away. It is in light of the said development that the case against the 2nd Defendant has since abated. This matter has never proceeded for hearing since its inception in the year 2018 and to this effect and further based on the proceedings here that the Plaintiff has not been ready to proceed, the suit is herein dismissed for want of prosecution pursuant to the Provisions of Order 17 Rule 2(5) of the Civil Procedure Rules. The Plaintiff can file the necessary application to reinstate the same when they shall be ready to proceed with the hearing.”
20. The Plaintiff/Applicant's suit was dismissed under Order 17 Rule 2(5) of the Civil Procedure Rules which provides as follows;

“A suit stands dismissed after two years where no step has been undertaken.”
21. As observed by the court in its order made on 19th December, 2023, by the time the Plaintiff/Applicant's suit was being dismissed for want of prosecution, it had never been set down for hearing since it was filed in the year 2018.
22. The Plaintiff/Applicant argues that he was not aware that the matter was scheduled for mention on 19th December, 2023 as his previous advocates on record failed to inform him. It is on this basis that he prays that the court sets aside the order dismissing his suit and the same be heard and determined on merit.
23. In Thathini Development Company Limited v Mombasa Water & Sewerage Company & another [2022] eKLR the court held as follows;

“18. The discretion of court to set aside an order for dismissal ought to be exercised judiciously. A suit is dismissed for a want of prosecution, means that the



parties therein failed to aid court in meeting its Overriding objective. The party seeking to reverse this order must explain sufficiently to court as to why his application is merited and persuade court to exercise its discretion.”

24. Even though the Plaintiff/Applicant blames his previous Advocates on record for allegedly failing to inform him that the matter was coming up for mention on 19th December, 2023, he has failed to explain the reason for the delay in setting the matter down for hearing since it was filed in the year 2018.
25. I note that when the court dismissed the Plaintiff/Applicant’s suit on 19th December, 2023, the Plaintiff/Applicant was given leeway to file the necessary application for reinstatement when he was ready to have the matter proceed for hearing.

Disposition.

26. I find that it is in the interest of justice that the Plaintiff/Applicant’s suit be reinstated. Consequently, the application dated 11th March, 2024 is allowed in the following terms:
 - a. Leave is hereby granted to the firm of M/S Geoffrey Otieno & Company Advocates to come on record as advocates for the Plaintiff/Applicant herein in place of the firm of M/S Fransisca C.B & Company Advocates.
 - b. The orders issued on 19th December, 2023 dismissing the Plaintiff/Applicants suit for want of prosecution are hereby set aside.
 - c. The Plaintiff/Applicant shall file and serve compliance documents within 7 days of the date hereof.
 - d. The suit shall be set down for hearing within 30 days of the date hereof.
 - e. In the event of failure to comply with (c) and (d) above the suit shall stand dismissed.
 - f. The costs of the application shall abide the outcome of the suit.
27. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 20TH DAY OF JUNE, 2024.

L. A. OMOLLO

JUDGE

In the presence of: -

Parties; Absent

Court Assistant; Mr. Joseph Makori.

