



**Wafula & another v Lokere & 13 others (Environment & Land Case E013 of 2022) [2024] KEELC 5592 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5592 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE E013 OF 2022**

**FO NYAGAKA, J**

**JULY 31, 2024**

**BETWEEN**

**MARY NASIMIYU WAFULA & ANOTHER & ANOTHER & ANOTHER &  
ANOTHER & ANOTHER ..... PLAINTIFF**

**AND**

**RICHARD LODIA LOKERE & 13 OTHERS ..... DEFENDANT**

**RULING**

**(On whether to dismiss suit for Want of Prosecution)**

1. This suit was instituted on 06/05/2022. The Defendants were served with summons to enter appearance and on 23/05/2022, they entered appearance. They filed their Defence and accompanying documents, all of them which were dated 17/06/2022 on 18/06/2022. They filed their trial bundle on 20/06/2022.
2. The record shows that the parties did not take any steps in the prosecution of the suit since then. Therefore, on 13/05/2024 this court fixed the matter for Notice to Show Cause why it should not be dismissed on 23/05/2024.
3. When the Notice to Show Cause came up for hearing the parties indicated that they had filed Affidavits explaining the cause or showing cause. In particular, the second Plaintiff swore an affidavit on 20/05/2024 and filed it. In it he stated that he had authority from his co-plaintiff to swear it on his behalf, and that the said plaintiff was his mother.
4. He deposed that when the suit was filed, and the summons served upon the Defendant, immediately they filed an objection in Kitale Chief Magistrates Court in Succession Cause No. 95 of 2020. In the objection they sought to revoke a Grant of Letters of Administration which had been issued in favour of the Applicants. He deposed further that the objection was still on going. It was due for a hearing



on 25/06/2024, and that was the reason why this suit had not been prosecuted. He prayed that it be not dismissed.

5. Similarly, the first defendant filed an affidavit which he swore on the 11/06/2024. By it he sought to explain why the suit should not be dismissed. His disposition was along the similar lines as that of the 2<sup>nd</sup> plaintiff. He stated that he and the other Defendants had purchased the disputed land on diverse dates from the late Christopher Wafula Mutoro. He annexed as RLL 1 (a)-(n) 14 copies of Agreements to evidence the transactions. He deposed further that he and the other Defendants became aware of the proceedings in Kitale CMC Succession Cause No. 95 of 2020 when they were served with the pleadings herein, and that the Plaintiffs had commenced the same, and obtained a Grant of Letters of Administration. After that, the Defendants moved to challenge the Grant and applied summons for revocation of the same. Further, they had moved the court for temporary orders barring the Plaintiffs from selling, transferring and the land and/ or evicting them from it pending the determination of the Application for revocation.

### **Determination**

6. The only issue in this matter is whether the parties have shown cause why this suit should not be dismissed for want of prosecution. Order 17 Rule 2 (1) and (2) of the *Civil Procedure Rules* are the provisions which govern failure by parties to fix suits for hearing for a time. They provide:
  - “(1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.
  - (2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.”
7. In the instant matter the parties have, after the issuance of the Notice to Show Cause provided evidence of the existence of a succession matter, being Kitale CMC Succession Cause No. 95 of 2020 which is still pending for determination on whether the Grant of Letters of Administration issued to the Plaintiffs would be revoked or not. This is a good reason for the delay in fixing this matter for hearing or taking any steps in it. In terms of Order 17 Rule 2(2) cited above, both parties satisfies this Court that indeed there was a proper reason for the delay. Sufficient cause varies from case to case and must be looked at from the prism of the circumstances presented before the Court. For this reason, the matter is spared from dismissal for want of prosecution.
8. That said, and for all practical future occurrences where a case may call for an explanation for delay in prosecuting it as contemplated under Order 17 Rule 2 of the *Civil Procedure Rules*, it is worth noting that even when such cause exists, it is not supposed to be only in the knowledge of the parties to the exclusion of the court. It is prudent and important that whenever a situation of the nature arises parties ought, in the earliest time possible but in any event before the period contemplated by the Rules expires, to inform the court forthwith for noting and recording it. This would mean that the court is aware of the same and determines whether such a reason is worth delaying the matter or preventing parties from taking further steps in it.
9. Therefore, it was important that when the Defendants discovered that the Plaintiffs had proceeded to take out a Grant of Letters of Administration whose revocation could impact on the outcome of the case, and they moved the lower court to revoke the Grant Defendants ought to have moved the Court accordingly for proper steps to be taken by this Court.



10. For this reason, this suit is not to be dismissed for want of prosecution. However, the parties are directed to report to this Court every four (4) months from this date on the progress of the Kitale CMC's Succession Cause No. 95 of 2020. This matter shall be mentioned on 28/11/2024 for confirmation on whether the succession matter shall have been concluded.

11. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 31<sup>ST</sup>  
DAY OF JULY, 2024**

**HON. DR. F. NYAGAKA**

**JUDGE, ELC KITALE**

