



**Nganga v Kigwe & another (Environment and Land Case Civil Suit
426 of 2011) [2024] KEELC 5576 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5576 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 426 OF 2011**

LN MBUGUA, J

JULY 25, 2024

BETWEEN

TERESIA WANGUI NGANGA PLAINTIFF

AND

JOHN MURITU KIGWE 1ST DEFENDANT

ALICE WANJA WANJOHI 2ND DEFENDANT

RULING

1. On 26.2.2019, the suit against the 1st Defendant was marked as abated while the suit against the 2nd Defendant was dismissed with costs as a consequence of non-attendance by the Plaintiff.
2. Subsequently, the Plaintiff filed a Notice of Motion dated 15.2.2024 which is for determination before this court. She seeks orders to vary/set aside this court's orders of 26.2.2019 dismissing the suit, so as to have the suit reinstated for hearing.
3. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit sworn on 15.2. 2024. She avers that in 2011, she had instructed the law firm of Mutuli Apopo Advocates to act for her in the matter and was dealing with Mr. Mutuli Patrick Lubanga Erick who falsely misled her to believe that this matter was ongoing and that the same was scheduled for hearing in January 2024 but he has since cut communication with her.
4. That subsequently, she appointed her current advocates who discovered that the instant matter was dismissed in 2019, yet her former advocate was still billing her even as late as 2024, following which she has reported the matter to Thika Police station vide OB No 63/27/1/2024.
5. She also avers that she has never instructed the firm of Amos and Kibanya who purported to act for her then later failed to attend court resulting in the dismissal of her case.



6. She states that if the matter is not revived, she stands to suffer since the subject matter herein was fraudulently acquired and transferred to the 2nd Respondent yet she had already sold the land to innocent purchasers who are in occupation of the said land.
7. She contends that her previous advocates' mistakes should not be visited upon her and that she is keen to prosecute the matter.
8. As earlier stated, the case against the 1st Defendant was marked as abated. The 2nd Defendant did not file a response to the application despite being served.
9. The Plaintiff is in essence asking this court to revive this suit which she filed 13 years ago and was dismissed by this court 5 years ago on account of non-attendance.
10. The provisions of Order 12 Rule 7 of the Civil Procedure Rules gives this court discretion to reinstate a suit which has been dismissed for non-prosecution. However, the Plaintiff ought to establish sufficient cause to warrant reinstatement.
11. The Plaintiff has blamed her advocate, stating that he misled her that the case is still in court. However, it is a well settled principle of law that a case belongs to a litigant and not the advocate. The Plaintiff failed to establish that she owned her matter and pro-actively followed it up.
12. This is a situation whereby due to the lethargy of the plaintiff, the case against the 1st Defendant abated while that of the 2nd Defendant was dismissed almost half a decade ago (5 years and counting)!.
13. In Rughani v Fifty Investments Limited and another, Civil Appeal number 80 of 2007 [2016] eKLR, the Court of Appeal stated that;

“There is no evidence on action taken by the appellant as the litigant and owner of the suit; all the appellant did was to change advocates in May 2005 after the delay; there is no explanation for inaction on the part of the appellant himself as the litigant who took the risk that his suit could be dismissed for want of prosecution.”

14. One of the cardinal principles in our constitution is “the expeditious delivery of justice” – See Article 159 (2) (b) of the Constitution of Kenya, which in effect codifies the 17th century maxim of “Justice delayed is justice denied”. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their families. That is precisely why rights to speedy trials are incorporated in law worldwide. Thus in Law and in Equity, delayed justice is abhorred.
15. In the case at hand there was inordinate delay in the prosecution of the suit leading to its dismissal and there was similarly an unexplained delay in the filing of the current application 5 years after the dismissal which impacts negatively to the overall administration of justice. Thus in the final analysis, I find that the application is not merited. The same is hereby dismissed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ochieng for Applicant / Plaintiff



Court assistant: Eddel

