



Mutuku & 2 others v Kenya Agricultural and Livestock Research Organization (KALRO) & 2 others (Environment & Land Petition 7 of 2019) [2024] KEELC 5932 (KLR) (18 September 2024) (Ruling)

Neutral citation: [2024] KEELC 5932 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ENVIRONMENT & LAND PETITION 7 OF 2019

TW MURIGI, J

SEPTEMBER 18, 2024

IN THE MATTER OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF APPLICATION OR ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10,19,20,21,22,(1),(B),23,28,40,43(1) (F),46,47,53,57,60,61,62,63,64,67,73,258 AND 259 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 27,28,40,43,46,47,50,53,57, AND 60 OF THE CONSTITUTION OF KENYA 2010

BETWEEN

FAITH WAMBUA MUTUKU 1ST PETITIONER

DAVID MUTHOKA 2ND PETITIONER

PRISCILLAH MUSYIMI 3RD PETITIONER

AND

KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANIZATION (KALRO) 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT



RULING

1. This ruling is in respect of the Notice of Motion dated 21st October 2022 brought under Rules 3(4), (5) & (8) and Rule 19 of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules 2013](#) (Mutunga Rules) in which the Applicant seeks the following orders:-
 - i. That this Honourable court be pleased to dismiss the Petition herein for want of prosecution with costs to the 1st Respondent.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of the 1st Respondent's Legal Officer, Patricia Ngutu sworn on even date.

The Applicant's Case

3. The deponent averred that the Petitioners filed the Petition herein together with a Notice of Motion dated 08/07/2019 seeking conservatory orders against the Respondents herein. That the application was thereafter dismissed vide the ruling delivered on 12/02/2020.
4. She further averred that the Petitioners filed an appeal against the ruling which they are yet to prosecute to date. She deposed that the 2nd Petitioner and 5 others sought to review the ruling vide the Notice of Motion dated 03/07/2020 which was thereafter dismissed on 29/01/2021.
5. The 1st Respondent contended that the Petitioners have lost interest in the Petition for the reason that they have not taken any steps since 29/01/2021 to prosecute the Petition. She further contended that the delay of 2 years in prosecuting the Petition was inordinate and inexcusable. She urged the court to dismiss the Petition with costs to the 1st Respondent.
6. Though duly served, the Petitioners did not file any response to the application.
7. The application was canvassed by way of written submissions.
8. The 1st Respondent's submissions were filed on 20th April 2023 which I have duly considered.

Analysis and Determination

9. Having considered the application in light of the Petition and the submissions filed by the 1st Respondent, the only issue that arises for determination is whether the Petition should be dismissed for want of prosecution.
10. The legal framework on dismissal of suits for want of prosecution is found in Order 17 Rule 2(1) of the [Civil Procedure Rules](#) which provides as follows:-

“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.

Further Order 17 Rule 2(3) of the [Civil Procedure Rules](#) states that:- “Any party to the suit may apply for its dismissal as provided in sub-rule 1”.
11. The application herein arises in a Petition filed under Article 22 of the [Constitution](#) and as such, Order 17 Rule 2 of the [Civil Procedure Rules](#) does not apply.



12. However, the court has inherent jurisdiction to ensure that matters are heard expeditiously to prevent abuse of its process.
13. The record shows that the Petitioners herein filed the Petition dated 08/07/2019 together with a Notice of Motion of even date. The application was thereafter dismissed vide the ruling delivered on 12/02/2020. The 2nd Petitioner and 5 others thereafter sought to review the ruling vide the application dated 03/07/2020. The application was dismissed vide the ruling delivered on 29/01/2021.
14. Indeed, the record shows that the Petitioners have not taken any steps to set the matter down for hearing since 29/01/2021. The delay of almost 2 years in prosecuting this Petition is in my view inordinate and inexcusable.
15. In the end, I find that the application dated 21st October 2022 is merited.
16. The upshot of the foregoing is that the application dated 21st October 2022 is allowed with no order as to costs.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 18TH DAY OF SEPTEMBER, 2024.

In the presence of:

Oluoch for the 1st Respondent.

