



**Githendu (Chairman) & 2 others (Suing as the registered officials of Mwingi Court Residents Association) v Matheri & 3 others (Environment & Land Case 266 of 2018) [2024] KEELC 7307 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7307 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 266 OF 2018  
LN MBUGUA, J  
OCTOBER 30, 2024**

**BETWEEN**

**SOSPETER GITHENDU (CHAIRMAN) ..... 1<sup>ST</sup> PLAINTIFF  
CHARLES KIHORO (TREASURER) ..... 2<sup>ND</sup> PLAINTIFF  
ALEX MWANGI (SECRETARY) ..... 3<sup>RD</sup> PLAINTIFF  
SUING AS THE REGISTERED OFFICIALS OF MWINGI COURT RESIDENTS  
ASSOCIATION**

**AND**

**PETER KAIRU MATHERI ..... 1<sup>ST</sup> DEFENDANT  
THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT  
THE NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT  
GOVERNMENT OF NAIROBI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is the plaintiff's Notice of Motion dated 12.1.2024 seeking orders that this suit which was dismissed on 13.10.2023 be reinstated. The application is premised on the grounds on the face of the application and the supporting affidavit of the advocate for the applicant. She argues that the applicant has been diligent in complying with courts directions until the fateful date of 13.10.2023 when the suit was dismissed for non attendance. She avers that she had erroneously mis-diarized the date of hearing as 6.2.2024 instead of 13.10.2023.
2. In opposition thereof, the 4<sup>th</sup> defendant opposes the application vide a replying affidavit of its advocate, one George Morara sworn on 30.1.2024. He avers that since year 2018, the plaintiffs had never taken



- out summons in this matter as set out under order 5 rule 1 (6) of the civil procedure rules, hence there was even no suit in existence capable of being dismissed. Adding that non attendance of the plaintiff's counsel on the hearing date was deliberate.
3. I have considered all the issues raised herein, the rival submissions as well as the record. The issue for determination is whether the orders sought for the reinstatement of the suit should be granted. The decision whether a suit should be re-instated for trial is a matter of justice and it depends on the facts of the case. See - Mwangi S. Kimenyi vs Attorney General and Another [2014] eKLR.
  4. The records in this file indicate that on 25.7.2023 during the pretrial, the matter was given a hearing date for 6.2.2023, but the matter was also mentioned in open court on 26.7.2023 for further directions. It was on this date of 26.7.2023 that the hearing date of 6.2.2024 was vacated and a fresh date of 13.10.2023 was given as a hearing date during the service week. To this end, I am inclined to accept the explanation proffered by the plaintiff that they misdiarized the hearing date where they retained the date of 6.2.2024.
  5. As rightly submitted by the plaintiff, the door of justice is not closed because a mistake has been made by a person of experience who ought to have known better, See Belinda Murai & 9 others vs Amos Wainaina [1979] eKLR, Philip Chemwolo & another vs Augustine Kubede (1982-1988) KAR 103. In the case of Gold Lida Limited vs NIC Bank Ltd & 2 other [2018] eKLR it was held that;  

“The overriding objective of our constitutional and statutory framework on civil procedure is to achieve substantive justice to the litigants”.
  6. And in the case at hand, justice behooves that the application to reinstate the suit be allowed.
  7. An argument has however been advanced by the 4<sup>th</sup> defendant that there was no suit capable of being reinstated as summons had never been served. However, this court takes into account the numerous and rigorous pretrial exercise conducted by the court whereby the case management was geared towards ensuring that the matter was trial ready. At some point, the pretrial was conducted on two consecutive dates of 25.7.2023 and 26.7.2023, of which the latter was done in open court. That is when counsel for the 4<sup>th</sup> defendant sought for more time to file an amended defence in response to the amended plaint, since they had only filed a defence to the initial plaint.
  8. I find that it is during this intensive pretrial exercise conducted both in the virtual platform and in open court that the 4<sup>th</sup> defendant ought to have raised the issue of the validity of the entire suit. Having accepted that the matter was trial ready, the 4<sup>th</sup> defendant is now estopped from taking the litigation of the case backward.
  9. 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 17<sup>th</sup> 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. In the light of the foregoing, I find that the question of interrogating the summons is being raised at a rather late stage whereby the matter had been set down for hearing.
  10. All in all, I proceed to allow the application dated 12.1.2024. Each party is to bear their own costs of the application.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>th</sup> DAY OF OCTOBER 2024  
THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Wafula holding brief for Kiunga for Plaintiff

Gituma for 4<sup>th</sup> Defendant

Court Assistant: Vena

