



**Githere and Mburu (As administrators of the Estate of David Mburu Githere - Deceased) & another v Ruhangi & 6 others (Environment & Land Case 748 of 2013) [2024] KEELC 13407 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13407 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 748 OF 2013  
LN MBUGUA, J  
NOVEMBER 14, 2024**

**BETWEEN**

**CATHERINE KIBUI MBURE GITHERE AND JAMES GITHERE MBURU (AS ADMINISTRATORS OF THE ESTATE OF DAVID MBURU GITHERE - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**

**GEORGE JONATHAN MAARA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOHN PETER KAMAU RUHANGI ..... 1<sup>ST</sup> DEFENDANT**

**GUMCHEM KENYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**PARAMOUNT UNIVERSAL BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**ELIZABETH MUIGAI T/A INTEGRA AUCTIONEERING COMPANY .... 4<sup>TH</sup> DEFENDANT**

**NAIROBI CITY COUNTY ..... 5<sup>TH</sup> DEFENDANT**

**WANDERJOY PARTY WORLD LIMITED ..... 6<sup>TH</sup> DEFENDANT**

**ISAAC MAINA WANDERE ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is the Plaintiff's Notice of Motion dated 26.4.2024 seeking Orders that the orders of 7.2.2023 dismissing plaintiff's suit be set aside, that their suit be reinstated and that their paginated trial bundle dated 25.3.2024 be deemed as properly filed.
2. The application is premised on the grounds on the face of the application and the supporting affidavit of Michael Kamau Kinga, the advocate for the plaintiffs. He avers that following the non-compliance



with pre-trial directions by two advocates on record for the plaintiff, their suit was dismissed on 7.2.2023. The former advocates never updated the plaintiff on what had transpired, instead, they have been deceiving the plaintiffs. Thus the delay in filing this suit was occasioned by the unprofessional misconduct of the two former advocates of the plaintiff.

3. The 1<sup>st</sup> and 2<sup>nd</sup> defendants oppose the application vide a replying affidavit of the 1<sup>st</sup> defendant dated 28.6.2024. He avers that the plaintiff filed the suit way back in year 2013 but was persistent in non-compliance with courts directions leading to the dismissal of the suit. Adding that the plaintiffs were absent on the dates when the matter was fixed for hearing and that no sufficient explanation was proffered as to why the plaintiffs took years to instruct another advocate after the dismissal of their case.
4. I have considered the material presented before this court for and against the application dated 26.4.2024. I have however disregarded any documents (responses, submissions et al ) filed contrary to the directions given by the court on 1.7.2024. The question falling for determination is whether the plaintiff's suit which was dismissed on 7.2.2023 should be reinstated. 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.
5. The plaintiffs blame their erstwhile advocates for their misfortunes which led to the dismissal of their case. They further contend that even after the dismissal, the said advocates did not update them on the progress of the matter. However, in Mwangi Gachiengu & 2 Others –Vs- Mwaura Githuku & Another – [2019] eKLR the court stated that;

“It is trite law that a matter once filed in court does not belong to the advocate but to the litigant. It is the responsibility of the litigant to be in constant touch with his advocate on the position of the matter. Where a litigant goes to sleep after filing a suit, he cannot blame his advocate for having not updated him on the position of the matter, or when the matter is dismissed because it has not been prosecuted or fixed for prosecution within one year.”

6. The history of the file particularly in regard to preparation of the trial is well captured in this courts ruling of 7.2.2023 at paragraphs 3-6, while at paragraph 7, the court noted that  
“This is not a situation whereby the parties (read plaintiffs in 748/15 and 870/2016) have been denied a chance to present their case. It is simply a case of indolence and squandering their chances to present their case.”
7. In the case of Moschion v Stuart & 16 Others (Civil Application E219 of 2023) [2023] KECA 1508 (KLR) (8 December 2023) (Ruling) Neutral citation: [2023] KECA 1508 (KLR), the court while dismissing several consolidated matters for none compliance with court's directions observed thus;

“The right to be heard is sacrosanct and is embodied in the latin maxim “audi alteram partem”. However, a party is only entitled to reasonable opportunity to be heard, See Ngingyanga Kavole vs. Mailu Gideon (2019) eKLR. The instant case appears to be one of mere inaction which is not excusable. Thus this is a situation whereby the plaintiff has driven herself from the seat of justice”.

8. As noted in the ruling of 7.2.2023, this case is rather old, now 11 years and counting. 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.

9. In the case of *Kestem Company Ltd vs Ndala Shop Limited & 2 Others* [2018] eKLR, the court held that: -

“On whether setting aside the dismissal will prejudice the fair hearing of the case, I have found that the delay of 10 years has not been satisfactorily explained and I do further find that delay is a source of prejudice to the Respondent as it affects the fair administration of justice. Article 47 of *the constitution* of Kenya 2010 provides for the right to administrative action that is expeditious, lawful, reasonable and procedurally fair. Article 159 of the said constitution provides that justice shall not be delayed. Failure to set down the suit for hearing for 10 years was a clear infringement of Article 159 of *the Constitution* of Kenya, 2010 as the failure delayed justice in this matter.”

10. Similarly in the case at hand, I find that failure to prosecute their case for 10 years negatively affects the overall administration and efficiency of justice. In the circumstances, the application dated 26.4.2024 is hereby dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> defendant. The defence hearing is to proceed as scheduled.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>th</sup> DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Wainaina holding brief for Kamau Kingo for Plaintiff Applicant

Kirimi and Tuwoi for 6<sup>th</sup> and 7<sup>th</sup> Defendants

Nyauchi for 5<sup>th</sup> Defendant

Oyucho holding brief for Njengo for 1<sup>st</sup> Defendant

Mbaabu for 3<sup>rd</sup> and 4<sup>th</sup> Defendants

Court Assistant: Vena

