



**Gichuki v Chege (Environment & Land Case 161 of 2019)
[2024] KEELC 13765 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13765 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 161 OF 2019**

JG KEMEI, J

DECEMBER 5, 2024

BETWEEN

GERALD MUREITHI GICHUKI PLAINTIFF

AND

KAMAMI CHEGE DEFENDANT

RULING

1. The Plaintiff/Applicant filed instant Application dated 6/9/2024 under Order 12 Rule 7 of the Civil Procedure Rules, and Sections 1A, 1B and 3A of the Civil Procedure Act (CPA) and Articles 48, 50 and 159 (2) (d) & (e) of the Constitution for Orders THAT;
Spent.
 - a. The Honorable Court be pleased to allows the firm of M/S Njeri Mwaura & Associates to come on record for the Plaintiff/Applicant.
 - b. The Honorable Court be pleased to set aside the order made vide a ruling dated 30th May 2024 and reinstate the suit for hearing on its merits inter partes.
 - c. The Honorable Court be pleased to give directions as to an early Hearing date for the Applicant's suit.
 - d. Costs of this Application be provided for.
2. The Application is based on the grounds thereto that the Notice to Show Cause dated 31/5/2024 was addressed to and served upon Joseph Gaita & Co. Advocates who ceased from acting on behalf of the Applicant; that as such the Notice to Show Cause was not personally served upon the Applicant who only came to learn of the dismissal order upon instructing a Surveyor to obtain a map for the suit land and lastly that the Applicant has a bona fide claim herein and it is in the interest of justice that his Application be allowed as prayed.



3. The Motion is further supported by the Affidavit of the Applicant, Gerald Mureithi Gichuki sworn on even date. He averred that he instituted his suit vide a plaint dated 3/7/2013 seeking inter alia a declaration that he is the bonafide owner of land parcel Ruiru/Ruiru East Block 2/6295, the suit land. That he instructed a surveyor to obtain a survey map for the suit land in support of his claim whereupon the surveyor showed him how to access the Case Tracking System (CTS) and learnt of the impugned dismissal order. That he visited the Thika Environment and Land Court Registry and confirmed the dismissal and now seeks leave for the firm of Njeri Mwaura & Co. Advocates to act for him/ that the Notice to Show Cause was served on his former Advocates Joseph Gaita & Co. Advocates and due to his illness. He has not been able to personally follow up on his case hence the Application.
4. The Application was served upon the Respondent vide a Return of Service dated 18/9/2024. The Respondent did not file any objection.
5. Be that as it may the Court will proceed to determine whether the Application is merited.
6. On the prayer for leave to come on record, the relevant guiding legal provision is anchored in Order 9 Rule 9 (b) of the Civil Procedure Rules that;

“9. Change to be effected by order of Court or consent of parties [Order 9, rule 9.]

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—

- (a) upon an Application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

7. The right to legal representation by Counsel of a party’s choice is a constitutional tenet to ensure fair hearing. The Respondent has not mounted any objection to this request. The Court record bears witness that the Applicant was formerly represented by the firm of Joseph Gaita & Co. Advocates until 19/5/20022 when the latter’s Application to cease acting for the Applicant was allowed. It is in the interest of justice that the prayer for leave to come on record is granted as prayed.
8. Moving to the next prayer on setting aside the Order made on 30/5/2024, the request is expressed under Order 12 rule 7 of the Civil Procedure Rules which states;

“7. Setting aside judgment or dismissal [Order 12, rule 7.]

Where under this Order judgment has been entered or the suit has been dismissed, the Court, on Application, may set aside or vary the judgment or order upon such terms as may be just.”

9. Further the Applicant relies on Section 3A of the *Civil Procedure Act* which provides that nothing in the Act shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. This section is preceded by Sections 1A and 1B that are popularly known as the oxygen principles. They state;

“1A. Objective of Act



- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

1B. Duty of Court

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.”

10. Reinstatement of a suit is a discretionary remedy of the Court. It can only be granted to a deserving Applicant who lays a sufficient basis for it. In the case *Shah Vs. Mbogo & Another* (1967) EA 116, the Court stated such discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.
11. A perusal of the Court record shows the Applicant filed this suit in Nairobi Environment and Land Court as ELC Case No. 807 of 2013, a period of over a whopping 11 years now. The suit was opposed vide a statement of defence dated 20/8/2013. The scanty record reveals that the last action in Milimani Court was issuance of a Notice to Show Cause dated 23/5/2019 which was prosecuted on 23/5/2019 before Obaga J. The Applicant’ Counsel informed the Court that his client had been ill and urged the Court to transfer the suit to Thika Environment and Land Court. The Court acceded to this request and transferred the suit on the same day. At Thika Environment and Land Court a date for pre-trial conference was set for 12/2/2020. Parties failed to comply and the matter was adjourned several times as shown by the Court records of 18/6/2020, 30/7/2020, 23/11/2020, 8/2/2021, 17/5/2021, 28/6/2021, 5/8/2021, 19/8/2021 and 2/11/2021. Thereafter the Applicant’s then Counsel filed an Application dated 23/3/2022 to cease acting which was allowed on 19/5/2022.
12. Subsequently a Notice to Show Cause dated 25/9/2024 was issued and it was addressed to Joseph Gaita & Co. Advocates on behalf of the Applicant. The suit was dismissed on 30/5/2024. The instant



Application has been filed four months after the impugned dismissal. The Applicant avers that he suffered a chronic heart attack from 2017 that impaired him from following up on his case. No iota of evidence has been adduced to demonstrate the alleged follow ups nor evidence of illness. To my mind and considering the age of this suit, the Applicant has not offered plausible reasons for the Court's indulgence in his favour.

13. In giving effect to Section 3A of the *Civil Procedure Act* above, the Court is minded to safeguard against any abuse of the Court process. It is also this Court's duty to ensure efficient and timely disposal of cases. To this end I rely on the persuasive words of Learned Judge Munyao in the case of Barnabas Maritim Vs. Manywele Korgoren & Another [2016] eKLR in dismissing a similar Application that the Court stated that the Registry is not a place to pile up cases. That a litigant must be vigilant and must pursue his case. He must at all times, if he has engaged Counsel, liaise with his advocate to ensure that his case is given due attention. Lastly, that the duty to move the case ultimately remains with the litigant.
14. However purely in the interest of justice and fortified by the provisions of Article 159 of *the Constitution* of Kenya and bearing in mind that no objection was raised to this Application, the Court will allow the Application on condition the Applicant takes steps towards the expedient prosecution of the suit within 45 days from the delivery of the Ruling. Failure to comply, the suit automatically stands dismissed on the 46th day with no further orders from the Court.
15. No orders as to costs.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 5TH DAY OF DECEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Mwaura for the Plaintiff/Applicant

Ms Thuo for Defendant/Respondent

Court Assistants – Ann/Melita

