



**Karanja v Suyianka & another (Environment & Land Case
704 of 2017) [2024] KEELC 13636 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 704 OF 2017
LC KOMINGOI, J
DECEMBER 5, 2024**

BETWEEN

JULIUS KAMAU KARANJA PLAINTIFF

AND

ELVIS MELITA SUYIANKA 1ST RESPONDENT

CATHERINE MUTWA 2ND RESPONDENT

RULING

1. This is the Notice of Motion dated 29th April 2024 brought under; (Article 50 (1) of the constitution, Section 3 and 3a of the [Civil Procedure Act](#), and Order 12 Rule 7 of the *rules of procedure*).
2. The grounds are set out in paragraphs (a) to (h).
3. The Application is supported by the Affidavit of C.O. Omburo, Advocate for the Plaintiff sworn on the 29th April 2024.
4. The Application is opposed. There is a Replying Affidavit sworn by Catherine Mutwa, the 2nd Defendant/Respondent sworn on the 18th June 2024.
5. The Notice of Motion was canvassed by written submissions.
6. The Plaintiff/Applicant's are dated 19th July 2024 while the 2nd Defendant/Respondent's are dated 25th August 2024.
7. I have considered the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. The issues for determination are;
 - i. Whether the Notice of Motion dated 29th April 2024 is merited.
 - ii. Who should bear costs of the Application?



8. It is the Plaintiff's case that counsel was unable to reach court in time having encountered transport challenges. He has relied on the case of *Bilha Ngonyo Issac v Kembu Farm Limited and another* (2018) eKLR where the court quoted with approval the case of *Ivita v Kyumbu* (1984) KLR 441 where the court stated;

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice to both the Plaintiff and Defendant; so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time. The Defendant must however satisfy the court that it will be prejudiced by the delay or even that the Plaintiff will be prejudiced. He must show that justice will not be done in the case due to the prolonged delay on the part of the Plaintiff before the court will exercise its discretion in his favour and dismiss the action for want of prosecution. Thus, even if delay is prolonged if the court is satisfied with the Plaintiff's excuse for the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time.”

9. The 2nd Defendant on the other hand states that the Plaintiff has not taken any steps to prosecute the matter and cannot rely on an unconvincing misfortune as a basis for consideration. The Application has been brought after a long delay. He has put forward the case of *Argan Wekesa Okumu v Dima College Limited & 2 Others*; HCCC No. 192 of 2004. He prays that the Plaintiff be found to have been indolent and that the Application be dismissed with costs.

10. I have considered the reasons given by the Plaintiff's counsel on what transpired on the 13th December 2023. I find that it is in the interest of justice that I allow the Plaintiff to ventilate his claim.

11. The upshot of the matter is that I allow the Notice of Motion dated 29th April 2024 in the following terms;

- a. That the order of dismissal of 13th December 2023 are hereby set aside and the suit is hereby reinstated.
- b. That the Plaintiff shall bear costs of this Application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF DECEMBER 2024.

L. KOMINGOI

JUDGE.

In the Presence of:

Mr. Ochieng for the Plaintiff.

N/A for the 1st Defendant.

Mr. Ondeng for the 2nd Defendant.

Court Assistant – Mutisya.

