



Moncho v Registrar of Land Kajiado County & 4 others (Environment and Land Case Civil Suit 157 of 2018) [2023] KEELC 15811 (KLR) (28 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15811 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 157 OF 2018
MN GICHERU, J
FEBRUARY 28, 2023**

BETWEEN

MASAGO OLE MONCHO PLAINTIFF

AND

THE REGISTRAR OF LAND KAJIADO COUNTY 1ST DEFENDANT

SAJILONI GROUP RANCH 2ND DEFENDANT

LAANDI NAISHWA 3RD DEFENDANT

KAPILA OLE KAAKA NIKONI 4TH DEFENDANT

KAIYIAKON OLE KORORBE CHAPALA 5TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 26/7/2022. The said application which is brought under articles 50 and 159 of the Constitution of Kenya, orders 10, rule 11, 12, rule 7, 24, rule 2, 42, rule 6 of the Civil Procedure Rules, sections 1A and 3A of the Civil Procedure Act and all other provisions of law seeks the following prayers.
 - i. That the firm of Moinket and Company advocates be granted leave to come on record on behalf of the plaintiff in place of Mogusu Miencha and Company Advocates.
 - ii. That the court be pleased to admit and substitute the applicant as the plaintiff, and the legal representative of the estate of the deceased Masango Ole Moncho.
 - iii. That the court be pleased to set aside the orders made on November 26, 2020 dismissing the plaintiff's suit for want of prosecution and reinstate it for hearing and determination on merit.
 - iv. That the taxation of the bill of costs be stayed pending the hearing and determination of the suit.



2. The application is supported by ten grounds, two affidavits, by Patrick Mokinyo Masago dated 26/7/2022 and November 29, 2022 and several annexures. The gist of the above material is as follows.
3. The suit was dismissed on November 26, 2020 for want of prosecution. At that time, the deceased was unwell and unaware of the progress of his case as he depended on his advocate for advice. The family of the deceased became aware of the status of the case on 24/3/2022 when they were served with a bill of costs. When they contacted their advocate he was not willing to continue with the suit.

On 15/5/2022, the applicant's father passed away and it took time to decide on who would be appointed his legal representative for the purposes of this suit. The family also took time to have their current advocate come on record. It is their position that the respondents will not suffer any prejudice because they still hold title deeds to the suit land and they can adequately be compensated by an award of damages.

4. The motion is opposed by the second to the fifth respondents who have filed five grounds of opposition and a replying affidavit sworn by Chacha Sammy. Both are dated October 12, 2022 and they raised the following issues.

Firstly, the application is said to offend the provisions of order 51, rule 4 of the [Civil Procedure Rules](#) because of its omnibus nature of seeking many prayers simultaneously.

Secondly, seeking other prayers before the suit is reinstated is an abuse of the court process.

Thirdly, the applicant is guilty of laches for filing the application two years after the delivery of the ruling herein hence there undue delay.

Fourthly, the application as drawn is unknown to the law and under the [Civil Procedure Rules](#) it is devoid of merit and ought to be dismissed with costs.

Finally, the suit having been dismissed under order 17, rule 2 (3) of the [Civil Procedure Rules](#) and not under Order 12, it cannot be revived under order 12, rule 7 [Civil Procedure Rules](#).

5. Only the plaintiff's counsel filed written submissions on 30/11/2022. The defendants' counsel did not file any submissions by the deadline of 20/1/2023 or even after. As I write this ruling in late February, no submissions have been received from the defendants' counsel.

The issues raised in the plaintiff's submissions are as follows.

- i. Whether the suit should be reinstated.
- ii. Whether the plaintiff who died on 15/5/2022 should be substituted.
- iii. Whether taxation proceedings should be stayed.

6. I have carefully considered the application dated 26/7/2022 in its entirety including the affidavits, grounds in support and in opposition, the written submissions and the law cited herein. I have also considered the entire record. I find that the defendants' five grounds of opposition should be treated as their issues alongside the three issues raised by the plaintiff's counsel. I will first deal with the defendants' issues.



7. On the first of the issues raised by the second to fifth defendants, I find that the application does not offend the provisions of order 51, rule 4 Civil Procedure Rules. The provision is as follows.

“Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served”.

I see nothing in the above provisions, or in any other provision, forbidding the so called omnibus prayers. The practice is to have an applicant make all the prayers sought in one motion so that there is no multiplicity of applications and no delay in determining the suit as required by sections 1A and 1B of the Civil Procedure Act. This finding covers the second issue raised.

8. Regarding the applicability of order 12, Civil Procedure Rules to an application seeking the reinstatement of the suit, I find it is applicable because order 17, rule 3, Civil Procedure Rules expressly brings in order 12. It provides as follows;

“Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the modes directed in that behalf by order 12, or make such other order as it thinks fit”.

Since order 12 Civil Procedure Rules applies in the dismissal of suits under order 17 Civil Procedure Rules and order 17 Civil Procedure Rules does not have its own mechanism for the reinstatement of such suits, then the order applicable for dismissal must be the order applicable for reinstatement and that is order 12 Civil Procedure Rules. I therefore find nothing wrong with relying on order 12 Civil Procedure Rules in seeking to revive the suit. This finding covers the fourth ground raised by the second to the fifth defendants.

I will come to the third issue later. I will now deal with the issues raised by the plaintiff.

9. On whether the plaintiff who died on 15/5/2022 should be substituted, I find that he should be. There are two reasons for this finding.

Firstly, the cause of action survives the plaintiff because it involves land which is inheritable by the defendants of the deceased. It is in rem and not in personam.

Secondly, the application has been made within a year of the death of the plaintiff as required by order 24, rule 3(2) Civil Procedure Rules. Even if the application had been made outside the period provided by the law, the court has discretion under the proviso to the sub rule to extend the time beyond one year.

10. I now come to the critical issue of whether the suit should be reinstated which also answers the defendants’ third issue of whether the applicant is guilty of laches for filing of the current application two years after the dismissal of the suit. My finding is that the suit should not be reinstated and the applicant is guilty of laches not just in filing the current application late but also in prosecuting the suit.

Firstly, as found by Ochieng Judge in her ruling dated November 26, 2020, the delay of six years then, was inordinate, inexcusable and prejudicial to the defendants. The good Judge quoted from William Shakespeare who is Hamlet at Act 3, Scene 1 equated delay in justice as “whips and scorns of time”. She also quoted Charles Dickens in Bleak House Chapter 1, where delay in justice is said to “...exhaust finances, patience, courage and hope...”

I too find that the delay was inordinate, inexcusable and prejudicial to the defendants.



Secondly, I find that the second delay of filing the current application about eighteen months after the dismissal of the suit was inordinate even considering that the plaintiff was sickly and passed away during that period. The total period of inaction by the plaintiff was more than seven years.

If a party files a suit and takes more than seven and a half years to take any step to prosecute it, such party cannot be heard to say that such a suit should be reinstated.

Granted that the plaintiff was sick at one time or another and that he was illiterate, still I find that the delay was too long. He should have visited his advocate or sent his children to the advocate to have the matter fixed for hearing.

Due to that long period of inaction on the part of the plaintiff, I find that the suit should not be reinstated. Consequently, I dismiss all the prayers in the notice of motion dated 26/7/2022 except for prayer number 3.

Costs to the respondents.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28TH DAY OF FEBRUARY, 2023.

M.N. GICHERU

JUDGE

