



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1231 of 2003

LUCY WAMBUI KINYANJUI.....
.....PLAINTIFF

VERSUS

NAIROBI CITY COUNCIL & 2 OTHERS.....
....DEFENDANT

RULING

The plaintiff brought this claim against the 3 defendants seeking an injunction to restrain the defendants through themselves, their agents or employees from trespassing and constructing illegal structures on the plaintiff's parcel of land known as PLOT NO. 174.30 at Umoja.

On 14th September 2004 counsel for the plaintiff and counsel for the 1st and 2nd defendants filed a consent order in the following terms:

“We the respective counsels for the parties herein would be obliged that this suit be and is hereby settled and or compromised as hereunder:-

- (i) That by consent, the plaintiff be and is hereby granted to retain the possession of PLOT NO. A174.40 Umoja Innercore Sector 1-3**
- (ii) That the plaintiff do and hereby renounces and or surrenders her interest in and or ownership of PLOT NO. A174-30 Umoja Inner core Sectors 1-3 in favour of Diana Muthoni.**
- (iii) That each party to bear its own costs of the suit.”**

On 12th July 2006 the 3rd defendant filed an application by way of Notice of Motion seeking orders that costs of the suit be paid by the plaintiff to the 3rd defendant.

The application was based on the ground that the 3rd defendant was not party to the consent order and that the consent order did not provide for costs to the 3rd Defendant who had been sued unfairly.

The application was fixed for hearing on 16th August 2005 but was dismissed for none attendance by counsel for the 3rd defendant/applicant. By this Notice of Motion dated 29th September 2005 and filed on 7th October 2005, the 3rd defendant seeks orders to set aside the order dated 16th September 2005

dismissing the 3rd defendant's Notice of Motion dated 12th July 2005 and that the Notice of Motion dated 12th July 2005 be reinstated.

The application is based on the ground that there was delay in posting the cause list of KLR and upon accessing the cause list, counsel proceeded to court but was held up at the entrance for security screening and arrived to find the application dismissed. The application is opposed on the ground that there was inordinate delay of 21 days bringing this application which is unexplained.

I agree with counsel for the respondent that the applicant did not act diligently to take 21 days to file this application after the dismissal of the application. But that notwithstanding and having looked at the application I am inclined to exercise my discretion in favour of the applicant.

The application is allowed in terms of Prayers 1 and 2 of the Notice of Motion dated 25th September 2006. Costs of this application to the respondent.

Dated and delivered at Nairobi this 26th day of July 2006.

J.L.A. OSIEMO

JUDGE