



**Mohamed v Board of Management Pentrose Community School & another (Environment & Land Case 26 of 2019) [2023] KEELC 16510 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16510 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 26 OF 2019  
NA MATHEKA, J  
MARCH 22, 2023**

**BETWEEN**

**SAADA HAMID MOHAMED ..... PLAINTIFF**

**AND**

**THE BOARD OF MANAGEMENT PENTROSE COMMUNITY  
SCHOOL ..... 1<sup>ST</sup> DEFENDANT**

**WAVECON ENTERPRISES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

- 1 The application is dated 13<sup>th</sup> February 2023 and is brought under Article 159 (2) (d), Section IA. 1B, 34 of the [Civil Procedure Act](#), Order 12, Order 51 Rule of the [Civil Procedure Rules 2010](#) seeking the following orders;
  1. That this Application be certified as urgent and be heard ex-parte in the first instance.
  2. That there be a stay of proceeding in this matter pending the hearing and determination of this application.
  3. That this court be pleased to re-open the 1<sup>st</sup> Defendant's case to enable them call the surveyor give evidence in this suit to enable the court achieve a just outcome for all parties.
  4. That the court be pleased to issue summons for the County Surveyor to attend court and testify in this suit.
  5. That the costs of this Application be in the cause.
- 2 The application is supported by the annexed affidavit of Paul Waga and on the following grounds that the matter proceeded for hearing on February 13, 2023, in which the 1<sup>st</sup> Defendant was forced to close its case as the surveyor who was to testify in the suit was unavailable. That the 1<sup>st</sup> Defendant did call



one witness in support of their case and the court directed that it was important for the Surveyor to testify in the matter for the court to have a clear picture of the case. That the 1<sup>st</sup> Defendant without hesitation filed a further list of documents on time. That the Advocate for the 1<sup>st</sup> Defendant sought for adjournment in three occasions for justified reasons. That on May 23, 2022, but the matter did not proceed as the County Surveyor was engaged on official duties in Nairobi, the matter also came up for hearing on July 14, 2022 when the court was not sitting. Further on December 6, 2022 when the matter came up for hearing the surveyor was mourning the loss of her husband and was attending burial in Nakuru. Lastly, the matter came up for hearing on February 13, 2023, but the Surveyor was not available as she was attending to official matters in Naivasha. That the adjournment sought were not geared towards delaying the fast completion of this case but they were unavoidable on the part of the 1<sup>st</sup> Defendant. That it is in the interest of justice that the proceedings of the 1<sup>st</sup> Defendant be granted opportunity to call upon the county surveyor so that she may testify in the matter. That the grant of the orders sought will not occasion any prejudice to the Respondents as the Land Surveyor will give evidence to enable the court settle this case in an informed manner. That it will be just to grant the orders sought herein in the interest of justice.

- 3 This court has considered the application and submissions therein. I have perused the court file and find that this matter was adjourned on the March 2, 2022, May 23, 2022, October 25, 2022, December 6, 2022 when the final adjournment was given for the 1<sup>st</sup> Defendant/Applicant and on the February 13, 2023 the 1<sup>st</sup> Defendant/Applicant closed their case and a date given for written submissions. These adjournments went on for an entire year! This court never gave directions on which witnesses were to be called by the 1<sup>st</sup> Defendant/Applicant as alleged. Litigation must come to an end as this matter is an old matter filed way back in 2019. I find that the reasons given for these numerous adjournments insufficient to warrant this court to reopen the matter. My final orders rejecting the same were clearly given on the February 13, 2023 and they still stand. I find this application is unmerited and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 22<sup>ND</sup> DAY OF MARCH 2023.**

**N.A. MATHEKA**

**JUDGE**

