



Okeno & Sons Building Contractors v Bukura Agricultural College & another (Miscellaneous Application E014 of 2022) [2023] KEHC 3822 (KLR) (28 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3822 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS APPLICATION E014 OF 2022**

WM MUSYOKA, J

APRIL 28, 2023

BETWEEN

OKENO & SONS BUILDING CONTRACTORS APPLICANT

AND

BUKURA AGRICULTURAL COLLEGE 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. On July 19, 2022, I allowed an application, dated February 4, 2022, after I was satisfied that the same had been properly served, and was unopposed, and that the respondents had notice that the matter was coming up on that date, for they had fixed the matter themselves for hearing. The previous court appearance was on May 19, 2022. The only attendance on that day was by Mr Nyauma, for the respondents. He indicated that the parties were negotiating, and asked for another date, whereupon the court gave him the July 19, 2022.
2. The respondents then filed the Motion, dated September 6, 2022, seeking stay of execution and setting aside of the judgment and decree of July 19, 2022, and of the consequential orders, and leave to defend, and for deeming of affidavits, filed simultaneously with the Motion, as duly filed, and the fixing of the application dated February 4, 2022 for hearing. That application was placed before Karanjah J, sitting at Busia, as Recess Judge, where interim stay was granted, and the application, dated September 6, 2022, was fixed for hearing on September 19, 2022 at Kakamega. On September 19, 2022, the matter was placed before me, and I directed that the said application be mentioned on September 26, 2022, and it be canvassed by way of written submissions to be filed by September 26, 2022. On September 26, 2022, I was away, and so the matter was allocated, by my assistant, the October 25, 2022, for mention. The matter was placed before PJ Otieno J on September 27, 2022. None of the parties were in attendance, and the application dated September 6, 2022 was dismissed for want of attendance. It was ordered that the judgment of the court of July 19, 2022 be enforced to move the file towards closure.



3. On October 3, 2022, an application was placed before PJ Otieno J, dated September 28, 2022, which sought review of the directions given on September 26, 2022, for mention on October 25, 2022, asking that the mention date be brought forward, or the respondents ordered to release a portion of the subject monies. Directions were given for service, and for mention of the matter on October 13, 2022. On October 13, 2022, the court stated that the application outstanding for canvassing was that dated September 28, 2022. It was recorded by consent that the application dated September 28, 2022 was marked as compromised, and leave was granted to Mr. Mandala to file and serve a further affidavit and supplementary submissions. The parties then mentioned the matter before me on October 25, 2022, and confirmed the filings. They asked me to give them a date for ruling on an application dated September 21, 2022.
4. I have set out the background above because there is no application pending or due for ruling. There is no application on record dated September 21, 2022. Only 2 applications were filed in September 2022, one dated September 6, 2022 and the other September 28, 2022. None of the 2 applications, that is to say those dated 6th and September 28, 2022, are pending. The application dated September 6, 2022 was dismissed on September 27, 2022, by PJ Otieno J. It ceased to exist, and I have not come across any orders that reinstated it. That dated September 28, 2022 was disposed of by consent on October 13, 2022, before PJ Otieno J. Unfortunately, the compromise that was reached and recorded, with respect to that application, for filing of a further affidavit and supplementary submissions, was in vain, for it was in respect of a non-existent application, for the application in respect of which the further affidavit and supplementary submissions were to be filed, dated September 6, 2022, had been dismissed on September 27, 2022, and had not been revived by the time that compromise was being recorded on October 13, 2022.
5. For avoidance of doubt, the order recorded on September 27, 2022 states as follows:

“Application dated September 6, 2022 is hereby dismissed for want of attendance. Let the judgment of the court dated July 19, 2022 be enforced to move the file toward closure. Let the original file be placed together with this file. Mention October 13, 2022. Let the parties be notified.”
6. The order, that was recorded on October 13, 2022, states:

By consent,

 1. The application dated September 28, 2022 is marked as compromised
 2. Leave is granted to the Mr Mandala’s client to file and serve further affidavit as well as supplementary submissions by close of day on October 14, 2022

Mention on October 25, 2022 before court one”

RULING IS DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 28TH DAY OF APRIL 2023

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Mr. Mandala and Mr. Obiero, instructed by Mandala & Company and C. Obiero & Associates, Advocates for the applicant.



Mr. Nyauma, instructed by the Attorney General, for the respondents.

