



**Yano v Kiptoo & another (Originating Summons E015 of 2024)
[2025] KEELC 2983 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2983 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ORIGINATING SUMMONS E015 OF 2024**

MD MWANGI, J

MARCH 25, 2025

IN THE MATTER OF PROPERTY KNOWN AS KAJIADO/KITENGELA/91437

BETWEEN

ALICE JEPKOECH YANO PLAINTIFF

AND

PETER KIMUTAI KIPTOO 1ST DEFENDANT

RAEL JEPKEMOI CHELANGA 2ND DEFENDANT

RULING

(In respect to the application by the Defendants/Respondents to have their replying affidavit filed out of the timelines given by the court admitted on record)

1. On 24th February 2025, the advocate for the Defendants/Respondents sought 14 days to allow him file the Defendants' response to the Originating Summons in this matter. The court, despite protests from the Plaintiff's advocate allowed the Defendants time to file their responses with corresponding leave to the Plaintiff to file a further affidavit, if need be, within 7 days of service. The court fixed the matter for directions under Order 37 of the Civil Procedure Rules on 20th March 2025.
2. On the 20th March 2025, Mr. Ngaira for the Plaintiff informed the court that the Defendants had only served him with their response the previous day. He had nonetheless burned the midnight oil literally and managed to file a further affidavit. The Defendants had additionally filed a Notice of Motion dated 18th March 2025 seeking to convert the Originating Summons into a plaint on the basis of the complexity of the issues raised in the Originating Summons.
3. Counsel for the Defendants explained that the Defendants had filed their replying affidavit after the lapse of 14 days granted to them because the deponent is a security officer who travels the breadth of this country in performance of his duties. He was allegedly away on duty and could not have therefore



have executed the replying affidavit on time hence the delay. He signed the replying affidavit as soon as he was available. The Defendants then proceeded to file it and serve it upon the Plaintiff's advocate.

4. The Defendants' advocate prayed that the replying affidavit be admitted on record. The Plaintiff's rejoinder was that the Defendants' were deliberately delaying the hearing of this matter.

Issue for determination.

5. The issue for this court to determine is whether the Defendants' replying affidavit ought to be admitted out of time having been filed after the expiry of the 14 days granted to them.

Determination

6. Courts of law exist to do justice. As the Court of Appeal stated in the case of Kamlesh Patni –vs- DPP & 3 others (2015) KECCA, courts must be redolent of fairness and reflect the best interests of the people whom the law is intended to serve.
7. For the purpose of doing justice, the law, specifically sections 3 and 3A of the *Civil Procedure Act* has the reserved inherent powers of the courts which the courts may draw upon as necessary whenever it is just and equitable to do so and in particular to do justice between the parties and to secure a fair trial between them.
8. In this case, I consider it appropriate to invoke the court's inherent powers in order to do justice and secure a fair trial between the parties. I therefore exercising the inherent powers of this court admit the replying affidavit by the Defendants on record despite them having been filed outside the timelines given by the court in order to facilitate the just and expeditious resolution of this matter.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF MARCH 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ngaira for the Plaintiff

Mr. Musa for the Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

