



**Kinyanjui v Karumi; Mbutia & 2 others (Interested Parties) (Environment & Land Case 126 of 2013) [2023] KEELC 17036 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17036 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 126 OF 2013  
EK WABWOTO, J  
APRIL 13, 2023**

**BETWEEN**

**EUNICE NJERI KINYANJUI ..... PLAINTIFF**

**AND**

**PETERSON MAINA KARUMI ..... DEFENDANT**

**AND**

**FELISTA MUTHONI MBUTHIA ..... INTERESTED PARTY**

**SUNCTUS GITONGA NDEGWA ..... INTERESTED PARTY**

**THOMAS ACAHCHI OSORO ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect to the 3<sup>rd</sup> interested party's application dated February 27, 2023 seeking to set aside and or review the orders made by this court on February 6, 2023 to the effect that the 3<sup>rd</sup> interested party do pay adjournment costs of Ksh 10,000/- to the plaintiff and the defendants. The application was supported by the affidavit sworn by Julius Ndichu Kihanya Advocate who deposed that the order was issued under an erroneous presumption that the 3<sup>rd</sup> interested party had not served the plaintiff, defendant and 1<sup>st</sup> interested party with his pleadings and in the circumstances occasioned the adjournment of the matter and yet the said parties had been served on various dates of July 24, 2021, October 27, 2021 and October 8, 2022 *vide* their respective email address.
2. Pursuant to the directions issued by this court on March 1, 2023, it was directed that the application be canvassed by way of written submissions to be filed by both parties. None of the parties herein filed any submissions and neither was the application opposed despite being served upon the all the parties.
3. However, having considered the application and its supporting affidavit, is evident that the issue for determination before this court is whether the court should proceed to set aside and vary its orders



issued on February 6, 2023 requiring the 3<sup>rd</sup> interested party to pay costs for adjournment of Ksh 10,000/-.

4. The decision of whether or not to allow an application for setting aside and or review proceedings or an order of the court is within the wide discretion of the court. The discretion to be exercised judiciously as was stated in the case of *Shah v Mbogo* (1979) EA 116. A basis for the exercise of the discretion has to be laid by the party inviting the court to exercise its discretion.
5. Articles 48 and 50 of the Constitution guarantees every Kenyan a right to access to justice and fair hearing. Article 159 (2) d of the Constitution requires that justice shall be administered without undue regard to technicalities whereas sections 3, 4 and 13 of the Environment and Land Court Act as read together with section 1A, 1B and 3A of the Civil Procedure Act expects the court to strive towards substantive justice.
6. In the present case, the 3<sup>rd</sup> interested party has adduced evidence annexed to the supporting affidavit sworn by Julius Ndichu Kihanya Advocate which is annexed as annexures “JNK 1, JNK 2, JNK3 and JNK4” confirming that indeed all the parties had been served by his pleadings. The same was not contested by the parties neither was the application opposed.
7. In view of the foregoing, the application dated February 27, 2023 is allowed in terms of prayer 1 to the extend that the order directing the payment of adjournment costs of Ksh 10,000/- is hereby set aside. There will be no orders as to costs.
8. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13<sup>TH</sup> DAY OF APRIL 2023.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

**Mr. Mwangi for the Plaintiff.**

**Mr. Ondieki for the 2<sup>nd</sup> Defendant.**

**Mr. Kirwa h/b for Mr. Ndichu for 3<sup>rd</sup> Interested Party.**

**Court Assistant; Caroline Nafuna.**

**Court Assistant; Caroline Nafuna**

