



REPUBLIC OF KENYA



**Kehar v Busam Capital Limited & 2 others (Environment & Land  
Case 41 of 2018) [2023] KEELC 17830 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17830 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 41 OF 2018**

**MN GICHERU, J**

**MAY 30, 2023**

**BETWEEN**

**SUSAN CHETAMBE KEHAR ..... PLAINTIFF**

**AND**

**BUSAM CAPITAL LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> DEFENDANT**

**BRENDAH JEROTICH CHEPKIYENG ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is on the Notice of Motion dated December 16, 2022. The Motion which is by the Plaintiff is brought under Order 12 Rule 7, 18 Rule 10 and 51 Rule 1 *Civil Procedure Rules*, Section 3A of the *Civil Procedure Act* and all enabling provisions of law. The motion has two main prayers namely:-
  - a. Setting aside the order dated November 24, 2022 dismissing the Plaintiffs and reinstating the same for hearing.
  - b. Stay of judgment scheduled for May 30, 2023 on the third Defendant's counterclaim and the recall of the witness for cross-examination by the Plaintiff.
2. The motion is supported by eight grounds, two affidavits and two annexures. The gist of all this material is that the Plaintiff and her counsel failed to appear in court for two reasons.

Firstly, the Plaintiff's counsel arrived late because he had an accident at Kitengela on his way to Kajiado Court on November 24, 2022.

Secondly, the Plaintiff did not attend because her advocate advised her that he would be seeking directions that his application to file crucial evidence inadvertently omitted initially be heard first. Her attendance in court would not be therefore necessary.



3. The motion is opposed by the first and third Defendants. The first Defendant's accountant Samuel Mwangi has filed a replying affidavit dated January 20, 2023 in which he says, inter alia, that the case is over ten (10) years old and the Plaintiff and her advocate have demonstrated complete laxity and lack of interest in the case to the detriment of the third Defendant who cannot occupy her property for which she has a good title.
4. The third Defendant has sworn a replying affidavit dated January 23, 2023 in which she deposes that the Plaintiff is delaying the quick conclusion of the suit because she enjoys interim orders to the detriment of the third Defendant. She is guilty of indolence and should not therefore be favoured with the court's discretion.
5. Only the counsel for the third Defendant filed written submissions on May 10, 2023. Other counsel did not file any such submissions even after the deadline of April 27, 2023.
6. I have carefully considered the Notice of Motion dated December 16, 2022 in its entirety including the affidavits, the grounds, the annexures, the submissions on record and the law cited therein and the entire record. I find that the motion has no merit for the following reasons.
7. Firstly, the hearing date of the main suit was taken by consent on February 16, 2022 which was more than nine months to the hearing date of November 24, 2022. A pretrial conference date was fixed for June 7, 2022. The Plaintiff was allowed time to file the so called fresh evidence.
8. Secondly, on June 7, 2022, with no fresh evidence filed, the court confirmed the case for hearing on November 24, 2022 in the presence of the Plaintiff's counsel. It could not therefore be true to say that the case was coming for directions on the hearing of the application to adduce new evidence. That application had been allowed on February 16, 2022 and none was pending.
9. Thirdly, if the case was not coming for the hearing of the main suit, the Plaintiff's counsel should have had the courtesy to inform the other counsel on record that he would be seeking to adjourn the case so that they and their clients did not have to travel all the way to Kajiado ready to be heard. It is pretty obvious that the Plaintiff and her counsel are not honest in their conduct of this court.
10. I know that it is a draconian move to lock out a party from being heard but this is a case whereby the Plaintiff has locked herself out by refusing to participate in the case for reasons best known to herself. I believe the first and third Defendants when they say that she has everything to gain by the delay which is working to their detriment.
11. Article 159 (2) (b) of the [Constitution](#) of Kenya provides that justice shall not be delayed. Section 1A of the [Civil Procedure Act](#) provides that the overriding objective of the Act and the rules made there under is to facilitate the just, expeditious, proportionate and affordable resolution of disputes governed by the Act.  
  
The same objective is repeated in Section 3 of the [Environment and Land Court Act](#). Section 1A (3) of the [Civil Procedure Act](#) provides that a party to civil proceedings or an advocate of such a party is under a duty to assist the court to further the overriding objective of the Act and to that effect, to participate in the processes of the court and to comply with the directions and orders of the court.
12. In this case, the Plaintiff and her advocate have done everything to delay the case, to disobey the court directions and orders and to frustrate the other parties. She is not deserving of any of the orders that she seeks in the application dated December 16, 2022 which I find lacks merit. I dismiss it with costs to the Defendants.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF MAY, 2023.

M.N. GICHERU

JUDGE

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