



**Masaku Teachers Investment Ltd v Kioko & 4 others; Kasimba & 199 others (Interested Party) (Environment & Land Case 35 of 2014) [2025] KEELC 1313 (KLR) (18 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1313 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 35 OF 2014**

**AY KOROSS, J  
MARCH 18, 2025**

**BETWEEN**

**MASAKU TEACHERS INVESTMENT LTD ..... PETITIONER**

**AND**

**FRANCIS KIOKO ..... 1<sup>ST</sup> DEFENDANT**

**DAVID KIKUMU ..... 2<sup>ND</sup> DEFENDANT**

**GIDEON KAVUU ..... 3<sup>RD</sup> DEFENDANT**

**KWETU SACCO SOCIETY LIMITED (FORMERLY KNOWN AS MASAKU  
TEACHERS SACCO SOCIETY LIMITED) ..... 4<sup>TH</sup> DEFENDANT**

**COUNTY LAND REGISTRAR MACHAKOS ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**PETER KASIMBA & 199 OTHERS ..... INTERESTED PARTY**

**RULING**

**1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants' case**

1. This ruling seeks to determine the notice of motion that has been moved under several provisions of law, and it is dated 9/09/2024. It seeks numerous reliefs from this court some of which are spent, and the residual prayers for determination are: -
  - a. That the court be pleased to deem the witness statement and list of documents filed by the 4<sup>th</sup> defendant on 29/08/2024 to have been filed according to leave of the court.
  - b. That the cost of this motion be costs in the cause.



2. The motion is supported by the grounds set out on the body thereof and the supporting affidavit of the 4<sup>th</sup> defendant's Chief Executive Officer Dr. Stanley Musa Kyalenzi which he deposed on 9/09/2024.
3. In brief, it was stated that in preparation for the hearing date of 3/10/2024, it became necessary for the additional witness statement and list of documents to be filed.
4. It was averred it was unfortunate the documents were filed late in the day but this was occasioned by the 4<sup>th</sup> defendant's counsel's ill health. It was averred that these documents were very critical to the defence case and that some of the defendants formed part of the 4<sup>th</sup> defendant's membership. It was stated that these additional documents have not only been filed but served.

#### **Plaintiff's case**

5. The motion was opposed by the plaintiff's replying affidavit deposed on 23/09/2024 by James Muiya who is the plaintiff's chairman and he swore it with the authority of the directors and shareholders.
6. In summary, he stated the defendants lacked locus standi to institute the motion hence it was fatally defective, vexatious, an abuse of the court process, mischievous, full of falsehoods, discloses no cause of action and ought to be dismissed forthwith.
7. It was further contended the 4<sup>th</sup> defendant had always been the 4<sup>th</sup> defendant's CEO even before the institution of the suit. In his view, the motion was mala fides intended to scuttle the hearing of the case.
8. According to him, the case had dragged on for too long and had been in court for over 10 years and blamed the 4<sup>th</sup> defendant for occasioning some of these adjournments.
9. He further asserted the allowance of the motion would re-open the pretrial process which took place over 5 years ago and the allowance of these documents would fundamentally alter the nature of the case and issues for trial which would occasion extreme prejudice to the plaintiff necessitating the reopening of pretrial discovery procedures.

#### **Interested Parties' (IP) case**

10. In response to the motion, the 1<sup>st</sup> interested party, Peter Kasimba with authorization of his co-IPs filed a replying affidavit deposed on 25/11/2024.
11. In short, he stated witness statement and list of documents filed by the 4<sup>th</sup> defendant on 29/08/2024 should be struck out from the court record as having been filed unprocedurally and without leave of the court.
12. Further, he reiterated the averments contained in the plaintiff's affidavit. But of significance, he stated the defendants had formed a habit of filing applications when a hearing date is scheduled purely for purposes of scuttling the hearing process.
13. He further stated the 4<sup>th</sup> defendant's CEO had attended court more than 8 times and at no time did he insinuate that he would be seeking to file additional documents. He further averred the documents filed were void, inadmissible and in breach of mandatory legal procedures.

#### **Parties' submissions**

14. The court directed parties to file written submissions. In compliance, the law firm of M/s. Andrew Makundi & Co. Advocates who are on record for the plaintiff filed written submissions dated 18/12/2024 and the IPs' law firm on record M/s. Moses Odawa & Co. Advocates filed written submissions dated 25/11/2024. Noticeably, the defendants' counsel did not file any.



15. Therefore, upon identifying and considering the issues for determination, this ruling shall later on in its analysis and determination, consider the arguments contained on the particular issue and also bear in mind the law and judicial precedents.

#### **Issues for determination.**

16. I have carefully considered the motion, its grounds and affidavits and the filed written submissions and the following issues which shall be handled cumulatively arise for determination.
  - a. Whether the motion is merited.
  - b. What orders should be issued including an order as to costs?

#### **Analysis and Determination**

17. As rightfully pointed out by the plaintiff's and IPs' counsels, when filing a defence as the defendants herein did on 21/05/2015, Order 7 Rule 5 of the Civil Procedure Rules (CPR) envisages that it ought to be filed together with the list of witnesses to be called at the trial, written statements signed by the witnesses except expert witnesses, and copies of documents to be relied on at the trial.
18. However, this proviso further states the statements may with leave of the court be furnished at least 15 days before the trial conference envisaged under Order 11 of the CPR.
19. Order 11 outlines the purpose of case conferences, how they should be conducted and the directions that emanate therefrom. Of particular interest to the circumstances of this case is Rule 5 thereof which provides: -
  - “(5) Where orders or directions are given at a case management conference —
    - (a) The judge or deputy registrar or magistrate or case management officer shall record the orders or directions and inform the parties thereof; and
    - (b) where necessary, the judge or deputy registrar or magistrate or case management officer shall allocate time within which the orders or directions shall be complied with by the parties and fix a date at which the judge or deputy registrar or magistrate or case management officer shall record compliance by the parties or make such other orders as may be just or necessary including the striking out of the suit.”
20. Nonetheless, before I deal with the merits of the motion, this court finds it necessary to deviate and deal with the history of this matter.
21. It is unfortunate this matter has not taken off for over 10 years now and although the plaintiff and interested parties sought to solely blame the defendants, this court will not entertain this notion.
22. Having carefully scrutinized the record, all the parties herein have derailed the hearing of the suit including filing a flurry of applications (all parties), not complying with pretrial directions (all parties), not serving a hearing notice (plaintiff) and not fixing the matter for hearing (plaintiff).
23. In fact in the latter situation, a notice to show cause why the suit should not be dismissed was served upon the plaintiff by this court but the plaintiff sought indulgence and sought time to amend the plaint.



24. Reverting to the substance of the motion before me, in the circumstances of this case, pretrial directions were duly issued as required by the law and upon compliance with the directions, the matter was slated for hearing.
25. Both the plaintiff's and IPs' submissions which are a mirror of each other have argued that court timelines must be strictly adhered to and have relied on the Supreme Court of Kenya's decision of *Odinga v Independent Electoral and Boundaries Commission & 3 others (Petition 5 of 2013)* [2013] KESC 2 (KLR) (26 March 2013) (Ruling) which stated: -
- “The purpose of the pre-trial conference is clearly set out in rule 10. Generally speaking, the pre-trial conference is a preparatory forum to lay the ground rules for the expeditious, fair and efficient disposal of the petition. It enables the court either on its own motion or upon hearing the parties, to make certain orders and issue directions to ensure a fair determination of the petition. Rule 11 provides that the court shall within two days of the pre-trial conference commence the hearing of the petition. While rule 10(1)(f) empowers the court to give directions in regard to the filing and service of any further affidavits or the giving of additional evidence, such directions cannot be made without taking into account the strict constitutional timelines within which the petition must be heard and disposed of.”
26. This binding decision sets out the reasons why pretrial directions are conducted. However, this decision which dealt with timelines is distinguishable from this case as the apex court was dealing with a presidential petition whose timelines thereof are limited by Article 140 of *the Constitution* of Kenya.
27. In this case where this court is not governed by the strictures of Article 140 of *the Constitution* of Kenya, it draws guidance from the persuasive decision of *KAM Company Limited v Shelter Afrique & another* [2015] KEHC 8384 (KLR) which stated: -
- “To address the issue, it is now clear that under the law all the parties will be afforded a fair opportunity to access the seat of justice. A party who has failed to file important documents in support of his case will be allowed to do that upon application if good reasons are provided.”
28. In this case, the defendants have sought this court's intervention under Order 50 Rule 6 of the Civil Procedure Rules which donates power to this court to enlarge such time upon such terms (if any) as are just as the case must require.
29. This plea by the defendants for an extension of time and the allowance of such a request by the defendants must conform with the dictates of *the Constitution* particularly Article 50 on the right to a fair hearing, Article 159 (b) of *the Constitution* on justice not being delayed, and Article 159 (d) on justice being administered without undue regard to procedural technicalities.
30. Notwithstanding this matter has been in court for too long, the defendants are not solely to blame. The reasons tendered as to why these documents were not filed timeously were because the defendants' counsel was unwell and the parties had a snag when their counsel was preparing their documents.
31. Indeed, the court record bears witness that their counsel had been unwell for some time and it is noteworthy that illness can affect the very best of us and on that basis, this court is convinced the defendants have advanced a good reason as to why discretion should be exercised in their favour.
32. In any case, the other parties will not be prejudiced as they will be allowed to file documents before the hearing date is slated.



33. Nonetheless, to fast-track the hearing of this matter, this court will issue strict directions that shall be complied with by all parties and any documents filed outside these directions shall automatically be expunged from the record.
34. The upshot is that this court finds the motion dated 9/09/2024 is merited and it is allowed. Costs shall be borne by the defendants. Thus, this court ultimately makes the following final disposal orders: -
- a. The witness statement, list and bundle of documents filed by the defendants on 29/08/2024 are deemed as properly filed and served.
  - b. The defendants are to file and serve an indexed and paginated trial bundle within 7 days hereof.
  - c. The plaintiff and interested parties are at liberty to file further statements and lists and bundle documents within 21 days hereof.
  - d. If the plaintiff and interested party file documents as directed in order (c) above, they shall file and serve an indexed and paginated trial bundle within 21 days of compliance with order (c).
  - e. Henceforth, any application filed by the parties herein shall not be entertained however, in the event of necessity, it shall only be filed with leave of the court.
  - f. Mention to take a hearing date on 4/06/2025.

Orders accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 18<sup>TH</sup> DAY OF MARCH, 2025**

**HON A. Y. KOROSS**

**JUDGE**

**18. 03.2025**

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM**

In the presence of;

Mr. Amolo for defendants

Mr. Odawa for Interested Parties.

Mr. Kiluva for plaintiff

Ms Kanja- Court Assistant

