



Oludhe & 2 others (All suing as the administrators of the Estate of Jackson Oludhe Aloo-Deceased) v Benken Enterprises Limited & another (Environment & Land Case 228 of 2018) [2023] KEELC 18880 (KLR) (13 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18880 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 228 OF 2018**

**LN MBUGUA, J
JULY 13, 2023**

BY WAY OF COUNTERCLAIM

BENKEN ENTERPRISES LIMITED

PLAINTIFF

VERSUS

DRAFTSAMWEL ODHIAMBO OLUDHE 1ST

DEFENDANT

DAVID OWUOR OLUDHE..... 2ND

DEFENDANT

DAVID OWUOR OLUDHE 3RD

DEFENDANT

THE GOVERNMENT LAND REGISTRAR 4TH

DEFENDANT

BETWEEN

SAMWEL ODHIAMBO OLUDHE 1ST PLAINTIFF

DAVID ODUOR OLUDHE 2ND PLAINTIFF

DAVID OWUOR OLUDHE 3RD PLAINTIFF

**ALL SUING AS THE ADMINISTRATORS OF THE ESTATE OF JACKSON
OLUDHE ALOO-DECEASED**

AND

BENKEN ENTERPRISES LIMITED 1ST DEFENDANT



RULING

1. This ruling relates to the application made by the counsel for the 1st defendant to have the case adjourned so as:
 - i. To call their witness namely Isaiah Kandie who is not before this court today.
 - ii. To have summons issued to the Chief Land Registrar to come and avail the deed file and the correspondence file in respect to the subject matter.
2. Counsel for the 2nd defendant is also seeking an adjournment and equally prays for summons to the Chief Land Registrar to produce the deed file No. 12762 and summons to the Director Land Administration to produce the correspondence file for LR No 1870/X/72.
3. Counsel for the plaintiff objects to the application for adjournment, averring that no reasons have been advanced as to why the witness known as Isaiah is not in court, and secondly such summons ought to have been made on June 8, 2023 when today's date was given.
4. I have considered the record of this file. It is noted that this case came up for hearing on February 22, 2021, but the hearing was adjourned due to the unpreparedness of the 1st defendant. On November 10, 2021, the court conducted pretrial when counsel for the 1st defendant indicated that they needed 14 days to file their trial bundle. Counsel for the 2nd defendant equally requested for more days to wit 21 days. That was the basis upon which the court gave strict directions in which the defendants were to file and serve their documents and witness statements by December 1, 2021.
5. It appears that the defendants never complied with these directions by the time the case commenced on January 19, 2022. It is noted that the plaintiff's case was eventually closed on July 18, 2022 of which the defendants were given a last adjournment to tender their evidence. That is when today's date was also fixed by consent of the advocates for the parties.
6. The foregoing analysis is an indication that the defendants had at their disposal close to one year to prepare for the trial. Further, the import of the last adjournment order is that the defendants were put on notice, that the case would not be adjourned again.
7. The issue being raised by counsels for the defendants to have summons issued to the Chief Land Registrar and the Director of Land Administration have come rather late in the day, when plaintiff's case has been closed. That issue ought to have been raised during the pretrial exercise or at least before the plaintiff's case was closed.
8. It is further noted that from July 18, 2022 when today's date was given, the matter has come up before this court on several occasions that is on December 19, 2022, April 20, 2023 and June 8, 2023. In all these occasions, the defendants never intimated that they intended to summon anyone!
9. I find that the application to summon witnesses has been made rather late in the day, the same is declined. Since the court has declined to adjourn the case and noting that the witness of the 1st defendant, one Isaiah Kandie is absent, then both the case of the 1st and 2nd defendants stand as closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.



LUCY N. MBUGUA

JUDGE

In the presence of:-

Kamotho for Plaintiff

Sheuda holding brief for Osundwa for 1st Defendant

A.Kamau for 2nd Defendant

1st and 2nd Plaintiffs

1st Defendant

Njamo holding brief for Kamotho for Plaintiffs

Court Assistant: Eddel

