



**Toshike Construction Co. Ltd & 2 others v Sokhi & 12 others (Environment & Land
Case E058 of 2023) [2023] KEELC 20056 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20056 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E058 OF 2023
MD MWANGI, J
SEPTEMBER 26, 2023**

BETWEEN

**TOSHIKE CONSTRUCTION CO. LTD 1ST PLAINTIFF
DANNS JUNGLE INVESTMENTS LTD 2ND PLAINTIFF
WOKABI MWAGO 3RD PLAINTIFF**

AND

**KUKU SINGH ALIAS SOKHI 1ST DEFENDANT
NAIROBI CITY COUNTY GOVERNMENT 2ND DEFENDANT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
DEFENDANT
NATIONAL CONSTRUCTION AUTHORITY 4TH DEFENDANT
MANSAAT HOLDINGS LIMITED 5TH DEFENDANT
FUAD HUSSEIN 6TH DEFENDANT
STEPHEN GATHUITA MWANGI 7TH DEFENDANT
PATRICK ANALO AKIVAGA 8TH DEFENDANT
MAMO BORU MAMO 9TH DEFENDANT
DANIEL WANJIRU 10TH DEFENDANT
MAURICE AKETCH MBS 11TH DEFENDANT
ENG. KANDA BOWEN 12TH DEFENDANT
SILAS JOHN SANYA OGENGO 13TH DEFENDANT**



RULING

1. On 4th July, 2023, this Court issued directions in respect of the Plaintiffs' application dated 6th April, 2023, the 1st Defendant's Application dated 18th April, 2023 and the Preliminary Objection by the 4th, 11th, 12th and 13th Defendants dated 17th April, 2023. The Court directed that they all be heard together and by way of written submissions. The Plaintiffs were to file and serve their submissions in 14 days from the 4th of July, 2023. The Respondents were to file their submissions in 14 days after service of the Plaintiffs' submissions.
2. On 31st July, 2023 however, Mr. Mavisi holding brief for Mr. Thongori for the Plaintiffs informed the court that they were unable to comply with the timelines given by the court and only managed to serve their submissions on 28th July, 2023, 24 days after the issuance of the directions. On his part, Mr. Adano for the 5th Defendant who was also holding brief for Mr. Haji for the 1st Defendant informed the court that he had not managed to file his submissions having only been served by the Plaintiffs on 28th July, 2023. Mr. Kuria, advocate for the 2nd, 7th and 8th Defendants too sought more time to file and serve his submissions.

Subsequent developments:

3. The court record shows that on 23rd August, 2023, the Law Firm of Swanya & Company Advocates filed a further affidavit sworn by Wilfred Masinde, the acting Deputy Director, Planning Compliance and Enforcement of Nairobi City County on the same date. The 5th Respondent's submissions were filed on 7th September, 2023.
4. On 20th September, 2023, the National Construction Authority, the 4th Defendant herein filed a Replying Affidavit sworn by its manager compliance, one Stephen Mwilu in response to the Plaintiffs' amended Notice of Motion Application dated 6th April, 2023. On the same date, submissions were filed on behalf of the 4th, 11th, 12th and 13th Respondents. A list of authorities cited in the submissions was filed yesterday.

Decision of the Court

5. The Court on 31st July, 2023 granted the Respondents only a further 7 days to file and serve their submissions. No party sought leave of the Court to file a Replying or Further Affidavit. Therefore, no such leave was granted to any of the parties.
6. The further affidavit filed by the Law Firm of Swanya & Company Advocates and the Replying Affidavit filed by the National Construction Authority were therefore filed without leave of the Court. It is not even clear whether the affidavits were served upon the Plaintiffs/Applicants and the other Respondents. No affidavits of service have been filed to prove service of these affidavits.
7. The submissions of the 4th, 5th, 11th, 12th and 13th Respondents too were filed out of the time granted to the parties to file their submissions.
8. Admitting, especially the affidavits on record without having afforded the Plaintiffs an opportunity to consider the averments therein and respond appropriately, would definitely and unfairly prejudice the Plaintiffs whose application is pending determination. The affidavits address issues raised in the application. It is contrary to the rules of natural justice.
9. The business of this Court is to do justice to all the parties at all times and in all circumstances.



10. I have no doubt in my mind that this Court has the inherent authority to expunge the affidavits and any other documents for that matter filed without its leave or out of the time given. However, and in order to do justice, this Court will not constrain or hamstring itself in a straightjacket of procedural technicalities. Article 159(2)(d) of the Constitution of Kenya (2010) indeed implores this Court to administer justice without undue regard to procedural technicalities.
11. I find it necessary, taking into consideration the circumstances of this case to rise to the higher calling of this Court to do justice by admitting on record the further affidavit filed by the Law Firm of Swanya & Company Advocates as well as the Replying Affidavit filed by the National Construction Authority and the submissions by the 4th, 5th, 11th, 12th & 13th Defendants. The same must however be served upon the Plaintiffs and all the other Respondents within the next 24 hours. The Plaintiffs shall have leave to file and serve a further affidavit and supplementary submissions within 7 days after service, should they deem it necessary.

It is so ordered.

RULING DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2023.

M. D MWANGI

JUDGE

In the virtual presence of:

Mr. Mavisi holding brief for Thongori for the Plaintiffs/Applicants.

Mr. Adano for the 5th Defendant/Respondent, also holding brief for Mr. Haji for the 1st Defendant.

Mr. Kuria for the 2nd, 7th and 8th Defendant/Respondent

No appearance for the 3rd, 4th, 6th, 9th, 10th, 11th, 12th, & 13th Defendants/Respondents.

