



REPUBLIC OF KENYA



KENYA LAW
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**Kibowen v Ruto & 15 others (Environment & Land Case 174 of 2015)
[2023] KEELC 19918 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19918 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 174 OF 2015
FM NJOROGE, J
SEPTEMBER 22, 2023**

BETWEEN

STEPHEN KIBOWEN PLAINTIFF

AND

**SIMON RUTO 1ST DEFENDANT
KIPKORIR RUTO 2ND DEFENDANT
KIPROP RUTO 3RD DEFENDANT
KIPCHUMBA RUTO 4TH DEFENDANT
CHEPCHIRCHIR RUTO 5TH DEFENDANT
CHEPKOECH RUTO 6TH DEFENDANT
LOICE YATOR 7TH DEFENDANT
SIMON RUTO 8TH DEFENDANT
JANE RUTO 9TH DEFENDANT
WILLY RUTO 10TH DEFENDANT
ALEX RUTO 11TH DEFENDANT
BENSON RUTO 12TH DEFENDANT
VALARY RUTO 13TH DEFENDANT
FRIDA RUTO 14TH DEFENDANT
GILBERT RUTO 15TH DEFENDANT
NANCY RUTO 16TH DEFENDANT**



RULING

1. This ruling is with respect to the defendants Notice of Motion application dated May 17, 2023 which is expressed to be brought under Sections 1, 1A, 3, 3A and 18(1) of the *Civil Procedure Act* which sought the following orders:
 - a. Spent
 - b. That this suit be transferred to Kabarnet Law Courts.
 - c. That costs of the application be in the cause.
2. The application was supported by the affidavit of Gilbert Ruto. The grounds on the face of the application and the supporting affidavit are that the defendants are residents of Baringo county, Eldama Ravine Sub-county, Esageri Division, Kiplombe Location; that they live on the suit property; that they are finding it expensive to attend the matter in Nakuru; that they have been advised by their advocates on record that Kabarnet Law Courts has jurisdiction to hear this matter and that the respondent will not suffer any prejudice if the present application is allowed.
3. In response to the application, the plaintiff filed a replying affidavit on June 20, 2023 sworn on the same date. He set out the background of the suit and deposed that he was declared the owner of the suit property on August 11, 2018 by the court in ELC Civil Case No 218 of 2014; Stephen Kibowen vs Agricultural Finance Co-operation; that on June 16, 2015 he instituted the present suit against the defendants seeking for orders of eviction; that the suit property is located in Muserechi area in Baringo county; that the distance between Muserechi and Nakuru town is 38.9 kilometers and takes about 47 minutes to cover the distance; that the distance between Muserechi and Kabarnet town is 119 Kilometers and it takes 1 hour 55 minutes to cover the distance; Section 14 of Gazette Notice No 5178 of July 28, 2014 Practice Directions on proceedings in the Environment and Land Courts and on proceedings relating to the Environment and the use and occupation of, and title to land and proceedings in other courts, provides that all new cases relating to the environment and the use and occupation of land should be filed in the nearest Environment and land Court for hearing and determination; that based on the foregoing, the suit property is within the local limits of this court sitting in Nakuru and not Kabarnet; that where an application for transfer of a suit has been made, the court has to consider where the defendant resides and/or carries on business, the convenience of the parties and their witnesses; that none of the applicants reside in Kabarnet town and the present application is only meant to delay the course of justice; that there are several matters that have been heard and determined and others pending before the court of appeal and this court; that the defendants have made several attempts to derail the expeditious disposal of this suit by filing multiple applications; that this trend needs to be stopped; that the issue of the place of trial in this matter was settled in the ruling delivered on February 15, 2018 where the court held that the suit property is 41.6 kilometers from Nakuru; that the present application is therefore res judicata and that if the suit is transferred to Kabarnet then the expenses and difficulties he will suffer would be immense.
4. The plaintiff also filed a preliminary objection dated June 20, 2023 on the same date which is on the following grounds:
 - a. That the application is res judicata, this honorable court having dismissed a similar application and held that this suit was properly filed in Nakuru.



- b. That the application is incurably defective, for being supported by an affidavit which does not indicate on which date it was sworn.
 - c. That the application is an abuse of the court process for seeking orders that have already been denied.
5. The application was supposed to be canvassed by way of written submissions. The defendants did not file any submissions while the plaintiff filed his submissions dated June 29, 2023 on June 27, 2023.
6. The court in its directions issued on June 20, 2023 ordered as follows:

' The motion dated May 17, 2023 shall be heard by way of written submissions. Applicant to file and serve submissions within 3 days and in default the motion dated May 17, 2023 shall stand automatically struck out,'
7. An applicant must present his case before court. He must be heard either orally or by written submissions unless the court otherwise orders. If a party fails to appear at an oral hearing they can not be deemed to have prosecuted their application and it can be dismissed either for want of attendance or for want of prosecution. The same case applies where an applicant who has been ordered to file submissions to prosecute his application fails to do so and it matters not whether the adversary has filed any submissions. it all boils down to the issue of respect for court orders. In this case I have noted a very ardent desire by the defendants to delay these proceedings for as long as possible including by use of needless applications.
8. Given that the defendants/applicants failed to file their submissions within three days as ordered by the court on June 20, 2023, and that no other mode of disposal of the application was provided for, their application which is under consideration is hereby automatically struck out. The applicants shall bear the costs of the application.
9. Further, I hereby order that the defendants shall not file any other application in future without leave of court which shall be formally applied for with justification given. This suit shall be mentioned virtually on October 18, 2023 for issuance of a hearing date.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 22ND DAY OF SEPTEMBER 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

