



REPUBLIC OF KENYA



**Muriu v Njuhiga (Environment & Land Case 663 of 2012)
[2023] KEELC 20037 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20037 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 663 OF 2012
EK WABWOTO, J
SEPTEMBER 21, 2023**

BETWEEN

ELIZABETH MARY RUGURU MURIU PLAINTIFF

AND

ROSE NYAMBURA NJUHIGA DEFENDANT

RULING

1. This ruling is in respect to the Notice of Motion application dated May 25, 2023 accompanied by a supporting affidavit sworn by Rose Nyambura Njuhiga, in which the Defendant sought the following orders:
 - i. That the Honorable Court be pleased to grant leave to defendant to file her defence and counterclaim out of time.
 - ii. That the draft defence and counter claim annexed and marked “RMN 1” be deemed as duly filed.
 - iii. That costs be in the cause.
2. The application was premised on the following grounds:
 - a. The defendant was never served with the summons to enter appearance, plaint or any other pleadings in the matter herein as provided for under the law.
 - b. That the defendant was the legal wife of the deceased having married in 1990 which marriage was solemnized on the August 24, 2002 under the civil [marriage Act](#).



- c. That the plaintiff is not the administrator as the grant of letters issued to her was revoked on grounds that the same was obtained based on false and fraudulent means and concealment of information.
 - d. That the defendant solely contributed to the purchase of the plots number 134 and 135 on LR NO.5805/2 –Kamiti corner phase 4 which plots I bought in the year 1998/1999 being the person in employment as my late husband had been retrenched way back in 1994.
 - e. That the plaintiff does not have any legal proprietary claim or otherwise on the suit premises and the court should not allow itself to be used by the plaintiff to harvest where she had not sown.
 - f. That the plaintiff cannot claim that she did not know that the deceased was married and did not have the capacity to contract another marriage with her or anybody else during the subsistence of the marriage with the defendant.
 - g. That the plaintiff claims in the circumstances is legally untenable and should be treated with the contempt it deserved and be dismissed.
3. On June 26, 2023, the matter came up for hearing of the application when all parties were granted leave to file submissions.
 4. In the replying affidavit dated June 23, 2023, the Plaintiff averred that she was the widow of the late Daniel Njuhiga Muturi who died on June 16, 2008. It was averred that the notice of motion application and Plaint were served on October 5, 2012. It was reiterated that summons were reissued twice on 3rd December 2019 and March 4, 2020, yet even after effecting service, the defendant never bothered to enter appearance or file a defence.
 5. It was argued that the applicant did not approach the court with clean hands having filed the application after eleven (11) years since the commencement of this suit and has not given any good reason for not filing a defence. It was submitted that the applicant's defence and counterclaim are contradictory and an afterthought. It was also argued that the counterclaim is scandalous, frivolous, and vexatious and an abuse of the court process.
 6. I have considered the application and replying affidavit. In my view, the issue that arises for determination is whether the application is merited.
 7. The time for filing defence is prescribed in order 7 rule 1 which provides as follows:-

Where a defendant has been served with a summons to appear he shall, unless some other or further order be made by the court, file his defence within fourteen days after he has entered an appearance in the suit and serve it on the plaintiff within fourteen days from the date of filing the defence and file an affidavit of service.
 8. Perusal of the court records confirms that summons to enter appearance was served upon the Defendant via Whatsapp on March 8, 2021. This was evidenced by an affidavit of service by Richard Macharia dated March 9, 2021. The defence therefore needed to have been filed latest on March 15, 2021. This application comes more than two years after the scheduled filing of the defence and the suit has so far been stalled with several mentions to confirm compliance by the parties.
 9. I am of the opinion that for the good administration of justice and case management, it is paramount for parties to file their documents within the time prescribed by the *Civil Procedure Rules*. The court



is cognizant that it is duty bound to ensure timely dispensation of justice and allow each party their constitutional right to be heard. However, for the interest of justice, I will allow the application and direct that the defense and counterclaim be filed within 7 days from today. There shall be no orders as to costs.

10. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF SEPTEMBER 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

N/A for the Plaintiff/Respondent.

N/A for the Defendant/Applicant.

Court Assistant; Caroline Nafuna.

