



Naivasha Waterfront Development Limited v Kaigananie & 2 others (Environment & Land Case E47 of 2023) [2023] KEELC 21020 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21020 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E47 OF 2023
A OMBWAYO, J
OCTOBER 26, 2023**

BETWEEN

NAIVASHA WATERFRONT DEVELOPMENT LIMITED PLAINTIFF

AND

MARK KARUIKU KAIGANANIE 1ST DEFENDANT

WELLIUM KARIUKI 2ND DEFENDANT

PETER KAIGANANIE KARIUKI 3RD DEFENDANT

RULING

1. Mark Kariuki Kaigananie, hereinafter referred to as the applicant has come to court praying that this application be certified urgent and service on the Plaintiff be dispensed with in the first instance and that this Honorable Court be pleased to strike out the entire suit as the alleged Plaintiff, Naivasha Waterfront Development Limited, Cpr/2009/11981 is nonexistent. That the entire suit herein be struck out as same is fatally defective, a non-starter and is an abuse of the court process
2. The application is based on grounds that the suit has been filed by a non-existent Plaintiff allegedly operating under CPR/2009/11981. The suit herein was filed in breach of mandatory requirement of Order 4, Rule I (4) 6 of the *Civil Procedure Rules*, 2010. The Registrar of Companies has brought clarity to the issues at hand. A non-existent entity cannot claim any right in law. That the Defendants will be greatly prejudiced should the application is not granted.
3. In the supporting affidavit the applicant states that the Registrar of Companies conducted its investigation and came to the conclusion that Naivasha Waterfront Development Limited (cpr/2010/27713), which said company belongs to the 1st Respondent herein is the lawful bearer of the company name "Naivasha Waterfront Development Limited.



4. That the said Registrar went on to state that the registration number CPR/2009/11981 belongs to a company known as Lynx Connections Limited and that there is an irregularity with the allocation and use of the name Naivasha Waterfront Development Limited by Lynx Connections Limited CPR/2009/1981.
5. That further, vide a letter from the Registrar of Companies dated 27th July, 2023 addressed to the advocates of the alleged Plaintiff/ Respondent and copied to my advocates on record herein, the said Registrar removed any references to CPRJ2009/11981 (Lynx Connections Limited) as Naivasha Waterfront Limited since the san-Le is not permitted by law and revoked all status reports (CR12) to that effect because they are not supported by law or the current company records. The said Registrar thereby revoked the letter dated 4th July confirming the status of the Plaintiff therein. That the alleged Plaintiff has stated in its documents that .it is registered under CPRJ2009/11981.
6. The alleged Plaintiff company does not exist under the CPR number it allegedly purports to exist under and the Supporting Affidavit sworn by one Edwin Ng'ang'a Karanja is false and meant to defraud Naivasha Waterfront Development Limited (CPR/2010/27713) of its hard earned money in the acquisition of the suit property as well as seeks to stifle the said company's developments. The said suit has been brought with ulterior motives and is an abuse of the court process.
7. The purported Plaintiff is not and has never been the registered proprietor of the property known as Land Reference Number 395/7, and has therefore no proprietary interest in the said suit parcel of land and therefore does not have the locus standi to institute and maintain a suit over the subject land.
8. The suit herein is a legal fantasy, bad in law and untenable and anchored on false facts and that this court can on its own motion order that the said suit be struck off.
9. The suit does not disclose a reasonable cause of action known in law against the Defendants and the said suit filed by the non-existing entity, being the purported Plaintiff is thus void in law and should be struck out by this Honorable Court.
10. The application is not opposed by the plaintiff as there is no replying affidavit by the respondent despite being served. The courts have dealt with uncontroverted evidence in various ways. The issue of uncontroverted evidence was addressed by Justice Mwongo in [*Peter Ngigi & Another \(suing as legal representative of the Estate of Joan Wambui Ngigi\) v Thomas Ondiki Oduor & Another*](#) 2019 eKLR where he stated:-

“22. There are any authorities that deal with the question of uncontroverted evidence, such as the situation in the present case where the defence did not show up at the trial. The general position running through such authorities is that uncontroverted evidence bears a lot of weight and a statement of defence without any evidence to support the assertions therein will amount to mere statements.”

11. In *Janet Kaphiphe Ouma & Another v Marie Stopes International (Kenya)* Kisumu HCCC No. 68 of 2007 Ali-Aroni, J. citing the decision in [*Edward Muriga Through Stanley Muriga v Nathaniel D. Schulter*](#) Civil Appeal No. 23 of 1997 held that:

“In this matter, apart from filing its statement of defence the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st plaintiff and that of the witness remain uncontroverted and the statement in the defence therefore remains mere



allegations ... Sections 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same by way of evidence”.

12. In Interchemie EA Limited v Nakuru Veterinary Centre Limited Nairobi (Milimani) HCCC No. 165B of 2000, Mbaluto, J. held that where no witness is called on behalf of the defendant, the evidence tendered on behalf of the plaintiff stands uncontroverted. Mulwa J, however in the case of Kenya Power and Lighting Company Limited v Nathan Karanja Gachoka & another [2016] eKLR stated:

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence in unchallenged or not.

13. I do find that the allegations by the applicant are not controverted and I do strike out the suit with costs as prayed.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF OCTOBER 2023.

A O OMBWAYO

JUDGE

