



**Chumz Limited v Mageeta Investments Limited; Khan t/a Motor
Atrep (Interested Party) (Environment & Land Case E362 of 2022)
[2023] KEELC 21146 (KLR) (25 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21146 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E362 OF 2022
LN MBUGUA, J
OCTOBER 25, 2023**

BETWEEN

CHUMZ LIMITED PLAINTIFF

AND

MAGEETA INVESTMENTS LIMITED DEFENDANT

AND

ADIL KHAN T/A MOTOR ATREP INTERESTED PARTY

RULING

1. This ruling relates to the application made by the plaintiff that the Amended defence and counterclaim which have been availed at page 103-108 of defendants bundle be expunged. The court has been referred to its directions given on 18.9.2023.
2. The explanation given by the defence is that the document became too bulky and could not be lodged in the C.T.S, as the same was being filed with other documents.
3. The directions of 18.9.2023 were clear that the amended defence was to be filed by 18.10.2023. The court has taken into consideration whether the failure to file the pleadings on time is an issue of procedural infraction or whether it is a matter that goes to the root of the dispute.
4. Even if this court was to expunge the said pleadings for good, the matter would still not be ready for trial as the plaintiff has been unable to give particulars of service of summons or suit papers upon the interested party.
5. The ends of justice demand that justice be seen to cut both ways. The procedural infractions on compliance are cutting across the plaintiff and the defendant hence “what is good for the goose is good



for the gadder.” I also refer to the case of *Alexander Khamisi Mulimi v. I.E.B.C & 2 others* [2018] eKLR.

6. I proceed to give directions as follows:

1. The defendant is directed to file and serve their amended pleadings (Amended defence and Counter Claim by 9.11.2023 failure to which such documents shall not be considered.
2. The plaintiff is directed to serve the Interested Party with all the suit papers and today’s directions and file an affidavit of service there of by 2.11.2023 otherwise the claim against the said party shall stand as dismissed.
3. The interested party is to file and serve their statement of claim by 16.11.2023 otherwise the matter shall proceed as an undefended claim against them.
4. The plaintiff is to file and serve their reply to amended defence & counter claim and statement of claim of interested party by 30.11.2023.
5. Further Pretrial directions on 13.2.2024

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kahama holding brief for Ouma for plaintiff

Ngina for defendant

Court Assistant: Eddel

ELC CASE NO. E362 OF 2022 (Ruling) Page 2 of 2

