



REPUBLIC OF KENYA



**Karanja v Njoroge & another (Environment & Land Case 32 of 2020)  
[2023] KEELC 21751 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21751 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 32 OF 2020  
FO NYAGAKA, J  
NOVEMBER 16, 2023**

**BETWEEN**

**ESTATE OF NGIGI KARANJA REPRESENTED BY NJOROGE NGIGI  
KARANJA ..... PLAINTIFF**

**AND**

**GEOFFREY NGOTHO NJOROGE ..... DEFENDANT**

**AND**

**ESTATE OF NDUNG’U NJOROGE REPRESENTED BY JAMES KARIUKI  
NDUNG’U ..... PROPOSED DEFENDANT**

**RULING**

1. The defendant has moved this court for an adjournment on account of his learned counsel’s bereavement. Learned counsel appearing for him has stated that he is from the mortuary this morning, having lost a worker of whom he was directly responsible for and involved closely in his life. He says the deceased died this morning and his body taken to the mortuary whereupon learned counsel went to before coming to court. For that reason, learned counsel says he is very interested and cannot be in a position to proceed with the hearing today.
2. While on that learned counsel also sought the order of this court setting aside its orders of October 2, 2023 in which this court, upon granting an adjournment to his client but in his learned counsel’s absence, ordered that the plaintiff does pay the defendant costs in the sum of Kshs 11,000/- before today. He contented that not only were the costs high but they were awarded to the Defence when the learned counsel for them withheld important information from the court.
3. The application for adjournment came against the backdrop that today’s hearing date was a last adjournment to the plaintiff thus learned counsel pleaded with the court to grant a very last adjournment given the special circumstances of a sudden bereavement.



4. On his part, learned counsel for the defendants argued that he would have opposed the application for adjournment had it not been the bereavement that had just occurred. But in respect to the variation of the earlier order on costs of adjournment, learned counsel for the defendant submitted that they were granted after the court was not given all the proper information. He argued that he had called learned counsel for the plaintiff the day before the previous hearing date and informed him that he had a patient to attend to and requested learned counsel to indulge him. That learned counsel promised him that he would not be opposed to the adjournment if the Defence counsel sent another one to hold his brief and he did so. He was thus shocked to learn of the award of costs on the subsequent date of hearing. He pleaded for more time to apply to set aside the order on costs. He also sought leave to file the application. Learned counsel for the plaintiff submitted that it was a surprise to him to hear from learned counsel about him having had a patient on the material date. Though he admitted that he had been called by the Defence counsel the day before hearing as stated, it was not at 8pm but at 10.30pm. His information in that call was that he (the Defence counsel) had difficulties traveling to Kitale. That was the reason he gave in seeking indulgence. Thus, the furthest they went that date in that call was that the plaintiff's counsel advised the defendants to send someone to hold his brief. Thus, the issue of a patient in picture was new and only stated in court on the date of hearing in issue now. He thus submitted that learned counsel had no excuse to delay the matter through an application to review the costs. That in any event the plaintiff's counsel had made arrangements to produce two court files in evidence in the date of hearing.
5. I have considered the application before me. I will determine whether the reason for adjournment is plausible and reasonably sufficient to warrant the orders sought. If it is then the second prayer of granting time to file an application for review of the orders sought are neither here nor there. In any event the prayer for leave to file an application for review of the orders sought to be reviewed is misplaced and misconceived. This is because an application for review of an order or judgment of the court is provided for under order 45 of the [Civil Procedure Rules](#). Rule one (1) of the order provides in sub rules that if any party discovers a matter which is important and new and which he, with all due diligence could not discover or produce at the time the order or decree was passed, or if there is an error or mistake apparent on record, or if he has any sufficient reason may apply for review of the order or judgment. He only does so in a matter where no appeal is allowed from or if it is allowed, he has not preferred an appeal against that order or decree.
6. In the instant case the applicant herein did not appeal the order of October 2, 2023. Again, the rule in issue, and even section 80 of the [Civil Procedure Act](#) do not provide for leave to be sought in order to apply for review. Thus, I disallow that prayer.
7. Regarding the application for adjournment on account of bereavement, it is clear that it comes against the backdrop of a last adjournment pending against the defendant. The defendant is in court. Learned counsel for the plaintiff left the issue to the court to determine.
8. Order 12 of the [Civil Procedure Rules](#) provides for hearing and consequence of non-attendance of matters. The order provides for situations where either or both or all parties do not attend court on the date of hearing. It gives the consequences of non-attendance. But in the instant case both the plaintiff and Defendant are in court and ready to proceed but learned counsel is not. Thus, this court turns to the provisions of order 17 on prosecution of suits.
9. Order 17 rule 1 provides that where a suit is set down for hearing, it shall not be adjourned unless a party applying for adjournment satisfies the court that it is just to grant the adjournment.



10. In the instant case although the suit is for hearing the defendant prays for adjournment on account of the bereavement of learned counsel. Is death or bereavement of learned counsel a just cause for adjournment.
11. This court looks at this request against the constitutional provision that the right to legal representation is one of those that every citizen is entitled to. In this matter if the court is to deem the bereavement of learned counsel an issue that does not necessarily indirectly affect a party who is represented by the counsel then it means that the separation of the two leaves the party 'standing' alone in the court and obligated to proceed with the matter irrespective of whether learned counsel considers it obligatory to proceed. Thus, once the party appointed counsel, to the extent that bereavement can affect counsel in his humanity that may or will impact on the party's legal representation.
12. Death is the last enemy to be destroyed (1<sup>st</sup> Corinthians 15:26, for those who believe on the Holy Bible). That shall happen on the last day when Jesus returns in the Kingdom, on the second coming (Revelation 21:4). Until then this enemy is with us who are living on earth. When it strikes, it shocks every affected person albeit differently. The effect on the affected depends on the relationship between the bereaved or survivors and the deceased. If they were close or special at least its occurrence can be devastating. Thus, since this court cannot read the hearts or memo and there is no instrument which can measure the impact of the alleged bereavement on counsel, this court can only leave it to God to gauge whether learned counsel is taking advantage of the death to procure an adjournment. Only him and God know these, as of now. All that learned counsel has said is he is stressed due to the bereavement hence not in a right frame of mind to proceed with the hearing. For counsel to be ordered to proceed in a mind frame that is incapacitated as he argues would indirectly impact on the right to legal representation of the defendant. Thus, I am constrained to find that bereavement but of an immediate relative or a person immediate in one's life is a just cause for granting an adjournment. Thus, this suit cannot proceed as envisaged in order 17 rule 1 of the *Civil Procedure Rules*. I therefore grant the adjournment with no order as to costs. Absent of bereavement this matter could have proceeded today. The matter will be mentioned virtually on December 18, 2023 to fix a hearing date in the new term.

**RULING DATED, SIGNED AND DELIVERED VIA TEAMS PLATFORM THIS 16<sup>TH</sup> DAY OF NOVEMBER 2023.**

**HON. DR. IUR FRED NYAGAKA**

**JUDGE**

**In the presence of:**

1. Mr. Kiarie Advocate for the Appellant
2. Respondent Mr. Simidi in person

