



**Opondo v Mohamed & 3 others (Environment & Land Case  
E188 of 2022) [2023] KEELC 22335 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22335 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E188 OF 2022  
LN MBUGUA, J  
DECEMBER 20, 2023**

**BETWEEN**

**CRISPINE OMONDI OPONDO ..... PLAINTIFF**

**AND**

**MOHAMED BILLE MOHAMED ..... 1<sup>ST</sup> DEFENDANT**

**ANNE WAVINYA MBITHE ..... 2<sup>ND</sup> DEFENDANT**

**KIAMBU DANDORA FARMERS COMPANY LTD ..... 3<sup>RD</sup> DEFENDANT**

**REAGAN MWNGANGI MASUE ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This court has conducted Pre Trial directions countless times, sometimes virtually, sometimes in open court as is evident from the proceedings of 28.9.2022, 8.12.2022, 28.2.2023, 17.4.2023 (when matter was scheduled for hearing), 5.6.2023 (when the court gave a final date for Pre Trial on 6.7.2023), 6.7.2023, 17.7.2023, 31.10.2023 and 14.12.2023. The common thread running all through relates to the issue of none compliance. For one reason or another, parties have taken the Pre Trial process casually thus delaying the speedy trial of the case which even had a hearing date on 17.4.2023.
2. On 14.12.2023, an issue was raised by advocates for the defendants that the trial bundle dubbed "Plaintiffs Amended list of witnesses dated 3.7.2023" which the plaintiff's advocate identified as their trial bundle was not served on them and that the same was not filed. This court is therefore required to give directions on the status of the said bundle and any other pleading, documents and witness statements which are irregularly filed.
3. I have gone through the digital portal and indeed the trial bundle of the plaintiff dated 3.7.2023 is not filed in the digital portal (CTS).



4. I will however indulge the plaintiff so as to rely on the said trial bundle under strict conditions. The court has arrived at this decision because the issue of procedural infraction has not been confined upon the plaintiff alone. A perusal of the file in the digital portal paints a grim picture in regard to the modus operandi of filing pleadings witness statements and documentary evidence.
5. In the case of 1<sup>st</sup> defendant, they were initially relying on a bundle dated 7.7.2022 of which on 6.7.2023, they stated that they would not change their Trial Bundle. On 17.7.2023, counsel for 1<sup>st</sup> defendant reiterated that they would rely on their bundle of 7.7.2022 plus pleadings filed in an earlier bundle whose date the counsel could not trace! Finally, the 1<sup>st</sup> defendant filed their “alleged Trial Bundle” on 25.10.2023 and the actual one on 27.10.2023 way after the timelines set by the court on 17.7.2023, where the court had given the filing of defence documents by 17.9.2023.
6. For the 2<sup>nd</sup> defendant the court cannot trace a Trial Bundle in the portal, though a defence statement was filed on 4.4.2023.
7. The Trial Bundle of 4<sup>th</sup> defendant was filed on 5.7.2023 but the statement of defence cannot be traced.
8. The mess is untenable. In the case of *Moschion v. Mwangi* (Environment and Land Case 350 of 2018) [2023] KEELC 17144 (KLR) (27 April 2023) (Ruling) the court struck out 8 suits for none compliance with Pre Trial directions while stating that the right to be heard is sacrosanct, but a party is only entitled to a reasonable opportunity to be heard.
9. The parties herein will get away with all and sundry transgressions. However, they are now sufficiently warned of the repercussions of none compliance with court’s directions.
10. I proceed to give directions as follows:
  1. The plaintiff is to file and serve their Trial Bundle dated 3.7.2023 along with the affidavit of service by 14.1.2024 failure to which, this suit shall stand as dismissed.
  2. The defendants shall file/serve any further witness statement and or documentary evidence and the Affidavit of service (in the event that there is a need to add such documents) by 28.1.2024. Documents filed/served outside the given timelines by defendants shall stand as expunged.
  3. The court will proceed to give a hearing date.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Kibathi for Plaintiff

M/s Awandu holding brief for Were for 3<sup>rd</sup> Defendant

Oduor holding brief for Mohamud for 1<sup>st</sup> Defendant

