



**Mpaashe v Kula & 3 others; Tiger Farm Isinya Limited & another
(Interested Parties) (Environment & Land Case 401 of 2017)
[2023] KEELC 22365 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22365 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 401 OF 2017
LC KOMINGOI, J
DECEMBER 14, 2023**

BETWEEN

LEONARD RIOPA RORIAN PASHA PLAINTIFF

AND

ELIJAH TIENDA OLE KULA 1ST DEFENDANT

JOSEPH NKOSHESHE TOMBO 2ND DEFENDANT

MRS. RAHAB NYANGENA 3RD DEFENDANT

TIMA OLE MPAASHE 4TH DEFENDANT

AND

TIGER FARM ISINYA LIMITED INTERESTED PARTY

PRINCIPLES STYLES LIMITED INTERESTED PARTY

RULING

1. This is the notice of motion application dated July 10, 2023 by the 2nd and 3rd defendants/applicants brought under;

Article 50 (1) of the [Constitution](#), section 3 and 3a of the [Civil Procedure Act](#), and order 12 rule 7 of the Rules of Procedure.

2. It seeks orders;
 - i. Spent;



- ii. That the order for dismissal for non – attendance given on July 5, 2023 be set aside and the 2nd and 3rd defendants defense be reinstated for hearing.
3. The applicants as well as their Counsel on record Mr. C.O. Omburo in their sworn affidavits aver that they attended the matter online and an order was issued that the matter would proceed physically in court. On their way to court they encountered mechanical issues which led to their late arrival in court. However, they were informed that their matter had been dismissed for non-attendance. They aver that they were ready to defend their case and they should not be denied the opportunity due to circumstances beyond their control.
 4. Counsel for the 1st defendant and 1st interested party did not oppose the Application.
 5. Counsel for the plaintiff contested the application stating that by July 5, 2023, the applicants had neither complied with the court’s directions issued on April 19, 2023 nor had they given an explanation for the delay. As such, the application should be dismissed because they had been given an opportunity but failed to prosecute their case.

Analysis and determination

6. I have considered the application, submissions and the authorities cited. The issues for determination are:
 - i. Whether the 2nd and 3rd defendants/applicants’ defence case should be reinstated for hearing.
 - ii. Who should bear costs.
7. Counsel has asked the court to reinstate their case for defence hearing stating that an occurrence beyond their control should not be visited upon the litigants. An application that was contested by the Plaintiff. He pointed out that the Applicants’ counsel has also not adhered to the directions issued on April 19, 2023 and urged court to be guided by section 1A of the Civil procedure Act.
8. The need for expeditious and timeous dispensation of justice cannot be overemphasised. the Constitution of Kenya under Article 159(b) clearly stipulates justice shall not be delayed which is buttressed under section 1A and 1B of the Civil Procedure Act as follows:
 - 1A. (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
 - 1B. (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - ...
9. To achieve this, Advocates and parties are bestowed upon them the duty of aiding courts dispense justice expeditiously as articulated under section 1A(3) of the Civil Procedure Act:
 - 1(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.



10. A brief litigation history of this matter is as follows:

On the 19th of April 2023, counsel for the applicants, Mr. Ochieng, made an oral application in court to be allowed to peruse the proceedings and sought leave to serve the parties with the Applicants' documents. The court allowed the adjournment stating explicitly that it was the last adjournment and granted Counsel a (twenty one) 21 days period to regularise their position and set the Applicants' defence hearing for the 5th of July 2023.

11. On July 5, 2023, the matter was called out in virtual court. Advocates for the Plaintiff, 1st Defendant, Applicants and 2nd Interested Party were present. The defence hearing was slated to proceed in open court at 10.30am. However, when the matter came up, Counsel for the Applicants and counsel for the 2nd Interested Party were conspicuously absent. The Defence case was thus marked as closed.

12. Counsel for the Applicant alleges that he arrived in court thirty minutes later with his witnesses ready to proceed with the hearing only to find that the suit had been dismissed. Remarkably, no action was taken by Counsel to prompt the Court to reconsider its decision. Subsequently, Counsel filed this application dated July 10, 2023 and filed on August 15, 2023.

13. I have perused the file and I take note that the Applicants' counsel did not also adhere to directions given four months prior to the hearing. The court cannot be faulted for concluding that counsel for the Applicants has approached this matter in a rather nonchalant manner. Whereas parties have a right to be heard, the hand of justice is a double edged sword that cuts both ways. I dare state that one man's right to be heard is another man's right to expeditious justice and no party should curtail the other party's rights. It is the court's mandate to strike a balance between all these interests. This being a 2007 suit it ought to be dealt with promptly and such glitches along the way only make it difficult to achieve this. And the court should take necessary actions to ensure the ends of justice are met and prevent abuse of the court process as espoused by section 3A of the *Civil Procedure Act* which provides;

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

14. In *Mobile Kitale Service Station v Mobil Oil Kenya Limited & another* [2004] eKLR Warsame J (as he then was) held:

“...I must say that the Courts are under a lot of pressure from backlogs and increased litigation, therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be better served if we dispose matters expeditiously. Therefore, I have no doubt the delay in the expeditious prosecution of this suit is due to the laxity, indifference and/ or negligence of the plaintiff. That negligence, indifference and/or laxity should not and cannot be placed at the doorsteps of the defendant. The consequences must be placed on their shoulders...”

15. I associate myself with the above sentiments and hereby dismiss the application with costs to the plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY IN KAJIADO THIS 14TH DAY OF DECEMBER 2023.

L. KOMINGOI



JUDGE.

In the presence of:

Mr. T. Aswani for the Plaintiff.

Mr. Lesikito for Mr. Mukeli for the 1st Defendant

Mr. John Masese for the 1st Interested Party.

N/A for the 2nd, 3rd Defendants

