



**Georgopoulou (Formerly Stavroula Rousalis) v Denacy Investments Limited & 8 others
(Environment & Land Case 86 of 2019) [2023] KEELC 22578 (KLR) (12 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22578 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 86 OF 2019
TW MURIGI, J
DECEMBER 12, 2023**

BETWEEN

**STAVROULA GEORGOPOULOU (FORMERLY STAVROULA
ROUSALIS) PLAINTIFF**

AND

**DENACY INVESTMENTS LIMITED 1ST DEFENDANT
DAVID RONALD NGALA ADHOCH 2ND DEFENDANT
LABH SINGH HARMAN SINGH LIMITED 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT
SILVER BRIDGE INVESTMENTS LIMITED 6TH DEFENDANT
REAL ENERGY LIMITED 7TH DEFENDANT
HOKING (KENYA) REAL ESTATE COMPANY LIMITED 8TH DEFENDANT
NATIONAL LAND COMMISSION 9TH DEFENDANT**

RULING

1. Before me for determination is the Notice of Motion dated 31st July, 2023 brought under Articles 50 (1) and 159 of the *Constitution*, Section 3 of the *Environment and Land Court Act* 2011, Sections 1A,1B,3A and 63 (e) of the *Civil Procedure Act*, Section 146 (4) of the *Evidence Act*, Order 51 Rule 1 of the *Civil Procedure Rules* and Rule 3 (2) of the *High Court (Practice and Procedure) Rules* in which the 8th Defendant/Applicant seeks the following orders: -

1. Spent.



2. That this Honourable Court be pleased to grant an order arresting or staying the delivery of its judgment scheduled for 1st November, 2023 and a further order granting leave to the 8th Defendant/Applicant to file its statement of defence, tender evidence, call its witnesses and file written submissions.
 3. That in the alternative to prayer 2 above, this Honourable Court be pleased to re-open the Defence case for the hearing of the 8th Defendant's/Applicant's case.
 4. That further to and in addition to prayer 3 above, this Honourable Court be pleased to grant leave to the 8th Defendant/Applicant to file its statement of defence, tender evidence and call its witnesses and file written submissions.
 5. That in any event, this Honourable Court be pleased to grant an order recalling the Plaintiff/Respondent and her witnesses to be cross-examined.
 6. That the costs of the application be borne by the Plaintiff/Respondent.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Shi Shunzhe sworn on even date.

The Applicant's Case

3. The deponent averred that he is the country representative of the 8th Defendant herein. He averred that he recently learnt of the existence of the suit and proceedings herein while conducting research at the Kenya Law Reports website. That upon discovery of the same, he instructed their Advocates upon which he was advised that the suit was slated for judgment on 1st November, 2023.
4. He further averred that the 8th Defendant was not served with summons to enter appearance or copies of the pleadings nor with either the mention/hearing or judgment notices. He contended that the 8th Defendant was not accorded a reasonable opportunity to be heard hence contravening its constitutional right to a fair hearing. He argued that the non-service of summons to enter appearance, copies of pleadings and hearing notices is a material error which has substantially vitiated the proceedings herein.
5. According to him, the 8th Defendant stands to suffer irreparable harm if it is denied the opportunity to defend the suit as it has a legal stake in the proceedings herein. He asserted that the application herein was filed timeously upon discovery of the suit. He contended that the issuance of the orders sought will not embarrass or prejudice the Plaintiff or any other party in the suit herein. Lastly, he argued that it is in the interest of justice that the application be allowed as prayed.

The Respondent's Case

6. The Plaintiff/Respondent opposed the application through the affidavit of Kishore Nanji Advocate sworn on 29th September, 2023. Counsel averred that the authority to act annexed to the supporting affidavit does not state the names of the persons who have signed the same as Director and Director/Secretary of the 8th Defendant.
7. He further averred that he applied for leave to effect service by way of substituted service through an advertisement in one of the local dailies since it was not possible to effect service of summons to enter appearance in the ordinary manner. That leave was granted by Justice O. Angote on 30/1/2019. Counsel averred that on 13/2/2019, he served the 8th Defendant with summons to enter appearance by way of an advertisement in the Daily Nation and that a copy of the said summons to enter



appearance was also affixed to Machakos Law Courts premises on the same date. Counsel added that on 21/11/2022, he filed an affidavit of service confirming that the 8th Defendant had been duly served.

8. He further averred that the deponent of the supporting affidavit, being a layman, did not explain nor provide particulars of his alleged research on the Kenya Law Reports website. That apart from the ruling delivered by Justice Mbogo C.G. on 9/2/2021, no other proceedings exist on the Kenya Law Reports website regarding the instant suit. Counsel averred that the proceedings herein are regular and in accordance with the order of this court issued on 30/1/2019. Counsel added that besides annexing a Title deed to its supporting affidavit, the Applicant did not annex a defence to signify that it has a bona fide claim to the suit property.
9. He averred that the Plaintiff stands to suffer immense prejudice and expense as she has been actively litigating the case since 25/1/2016 while she and her witness travelled from Greece and South Africa respectively for the hearing of this case. According to Counsel, the present application is aimed at frustrating the Plaintiff from accessing justice noting that the matter has been in court for more than seven and half years. Finally, Counsel argued that the application is frivolous because there was no defence attached to it, the delay is inordinate and the reasons given by the Applicant are bizarre. Counsel urged the Court to dismiss the application with costs.
10. The application was canvassed by way of written submissions.

The Applicant's Submissions

11. The Applicant's submissions were filed on 12th October, 2023. On its behalf, Counsel submitted that the primary issue for determination is whether the application is merited. Counsel submitted that procedural rules should not be unduly applied so as to defeat substantive rights. Counsel submitted that Article 159 (2) (d) of *Constitution* enjoins the court to administer justice without undue regard to procedural technicalities. Counsel contended that despite the substituted service in the newspaper advertisement, the 8th Defendant's Directors who are Chinese nationals would not reasonably be expected to be perusing local dailies which are in English print.
12. Counsel submitted that it is within the Court's discretion to allow the application in order to prevent substantial hardship and injustice which may be occasioned to the 8th Defendant if denied an opportunity to defend its title to the second suit property. Counsel added that the injustice and prejudice that would befall the 8th Defendant far outweighs any prejudice which might be occasioned to the Plaintiff if the application is disallowed. Counsel submitted that being the registered proprietor of LR No. 12715/632, the 8th Defendant's title is indefeasible and can only be challenged on the basis of fraud to which it is shown that it was a party to or had knowledge of.
13. Counsel was of the view that the Court can limit the time frames for filing pleadings, cross-examination of witnesses and exclusion of adjournments. Urging the Court to allow the application, Counsel relied on the case of *Mathew Owino Owinja & another v Joyce Atieno Odumah* [2020] eKLR in support of his submissions.

The Respondents Submissions

14. The Plaintiff's submissions were filed on 23rd October, 2023.
On her behalf, Counsel reiterated the contents of his replying affidavit. He poked holes in the 8th Defendant's submissions stating that the deponent had not averred that he was with his Advocate while conducting his research on the Kenya Law Reports website. It was submitted that the deponent of the supporting affidavit averred that being a Chinese national, he had limited knowledge of the English



language which coincidentally is the same language in his supporting affidavit. Counsel argued that the above submissions had been made by Counsel for the 8th Defendant from the bar and the same should be disregarded.

15. Counsel further submitted that had the 8th Defendant notified the Companies Registry of a change of address of its registered office, then the Plaintiff would have been able to serve summons to enter appearance and pleadings in the suit. According to Counsel, the mode of service was valid and hence the 8th Defendant only has itself to blame. Counsel argued that there is no affidavit evidence that the directors of the 8th Defendant have no knowledge of the English language and therefore the legal presumption is that they were duly served.
16. Counsel reiterated that the Plaintiff has incurred great expense in litigating the suit since 25/1/2016 while also factoring witness expenses from Greece and South Africa. Accordingly, Counsel argued that it would be unjust to allow the application considering that the 8th Defendant was duly served with summons to enter appearance. Counsel urged the Court to dismiss the application with costs. To buttress his submissions. Counsel relied on the following authorities: -
 - i) [*Peter Karanja Kamani v Isaac Mwangi Kimani*](#) [2018] eKLR
 - ii) [*WW v Severin Kinyanjui Njoroge & another*](#) [2021] eKLR

Analysis and Determination

17. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the Applicant is entitled to the orders sought.
18. The 8th Defendant is seeking leave to file its defence and documents out of time in addition to reopening its case for full hearing. The Court's power to enlarge time is based on Section 95 of the [*Civil Procedure Act*](#) and Order 50 Rule 6 of the [*Civil Procedure Rules*](#).
19. Section 95 of the [*Civil Procedure Act*](#) provides as follows;

“Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.
20. Order 50 Rule 5 on the other hand provides as follows:-

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the Court, the Court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

that the costs of any application to extend such time and of any order made thereon be borne by the parties making such application, unless the Court orders otherwise.”
21. Extension of time is a discretionary power vested with the trial court (See the case of *Shah -vs- Mbogo* [1967] EA 166). The principles that govern the exercise of discretion to extend time were laid out



by the Supreme Court in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR as follows: -

Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;

A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court

1. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
 2. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 3. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 4. Whether the application has been brought without undue delay; and
 5. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
22. Section 1B of the Civil Procedure Act, imposes a duty on this Court to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes.
23. The Plaintiff instituted this suit vide a plaint dated 18/11/2015 which was subsequently amended on 5/11/2018. The Plaintiff was granted leave to effect service upon the 8th Defendant through substituted service in one of the daily newspapers. Accordingly, on 13/2/2019, the Plaintiff effected service upon the 8th Defendant by way of substituted service in the Daily Nation and by affixing a copy of the summons in the court premises. It is not in dispute that the Applicant did not file its defence within the time prescribed. The reason advanced by the 8th Defendant for not entering appearance was that it was unaware of the proceedings and only discovered the same while conducting a search at the Kenya Law Reports website.
24. I find that the Applicant’s has given a reasonable explanation as to why it failed to enter appearance and file its defence on time. It would be unjust and indeed a miscarriage of justice to deny the Applicant who has expressed its desire to be heard the opportunity of defending its case. Article 50 of Constitution entitles every person to a fair hearing. Similarly, the rules of natural justice provide that no man shall be condemned unheard.
25. The Applicant averred that it is the registered proprietor of the second suit property known as LR No. 12715/632 which was transferred to it by the 7th Defendant as per the title deed produced as Exhibit “XX2”. The prejudice to be suffered by the 8th Defendant if not heard on its defence is that it stands to lose the suit property if it is the bona fide owner. On the other hand, if the Plaintiff is the bona fide owner, the prejudice suffered will be in terms of travelling expenses and time wasted which can be fairly compensated with an award of costs.
26. In the end, I find that the application dated 31st July 2023 is merited and the same is allowed in the following terms:-
- a. The Applicant is granted leave to file and serve its Defence within 7 days from the date of this ruling.



- b. The Respondent will have corresponding leave to file its response thereto.
- c. The suit herein be and is hereby re-opened for the hearing of the Applicant's case.
- d. The plaintiff and her witness will be recalled for cross examination
- e. The Plaintiff is awarded costs of the application .

HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF DECEMBER, 2023.

In the presence of:-

Court Assistant Kwemboi.

Ms. Mulongo holding brief for Nanji for the Respondent.

Munguti holding brief for Nguru for the Applicant.

