

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 39 OF 2014

SILAS WANYONYI MUKHEBI.....PLAINTIFF

VERSUS

JOHN KITUI WANYONYI.....DEFENDANT

RULING

1. The court is ready to proceed with the hearing but the plaintiff has applied for adjournment on account of unpreparedness to take the defence hearing proceedings. The application has not been opposed because, in the words of the defence counsel, he wants “to be fair to the plaintiff’s side”, after the plaintiff’s case has been closed.

2. This court is not impressed at all by the conduct of the learned counsel who have appeared today in the matter. It appears that both have conspired to cause an adjournment. It should be borne in mind by all counsel and anyone who is sent to Court by a party to hold brief for them that there is no room for litigation by instalments. When a person/learned counsel accepts instructions to hold brief to in a matter, the instructions should be full and not limited to an adjournment or the specific issue that he/she is to address the court on. It is not an automatic right for a party that once he/she seeks an adjournment it shall be granted. There have to be satisfactory reasons to be advanced to court in terms of **Order 12 Rule 3** of the **Civil Procedure Rules**. For that reason a person who moves the court must be prepared for any eventuality. Adjournments are granted by courts on a discretionary basis. But the discretion has to be judiciously exercised and supported by reasonable evidence or facts.

3. I have considered the issues herein. I could have denied the adjournment but because the defendant himself is in court and ready to proceed but the advocate holding brief for his lawyers has acceded to the adjournment, I will reluctantly grant the adjournment since it appears to me that the advocate holding brief for his lawyers seems either not prepared for his case or has a soft spot for the adverse side and that may prejudice the defendant if the case proceeds.

4. For the reasons of unpreparedness of the defence counsel to press on for the hearing of the defence case, I will not grant the defence costs of the day. The adjournment is granted and the parties shall bear court adjournment fees equally. Defence hearing shall be conducted on **8/3/2022** and it shall be a last adjournment for him.

DATED, SIGNED AND DELIVERED AT KITALE ON THIS 27TH DAY OF JANUARY, 2022.

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.