



REPUBLIC OF KENYA

High Court at Malindi

Environmental & Land Case 39 of 2009

THOMAS MAOSA MARANGA P/A

MARANGA MAOSA & ASSOCIATES

**ADVOCATES.....PLAINTIFF
VERSUS**

THE CHAIRMAN/SECRETARY,

PEACE OF ELSHADAI TEMPLE – P.E.T a.k.a

PEACE OF ELSHADAI TEMPLE MINISTRIES-P.E.T

CONSTANCE TUNDA VUKKO.....DEFENDANTS

RULING

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1. What is before the court is the Defendant's Notice of Preliminary Objection dated 23rd November 2012 and filed on 27th November 2012.
2. The said Preliminary Objection is premised on the Ruling that was delivered by Hon. Lady Justice Meoli on 21st February 2012.
3. The Plaintiff filed his Grounds of Opposition on 13th December 2012 in which he stated that the Plaintiff's Preliminary Objection is frivolous, vexatious, bad in law, incompetent and an abuse of the court process.
4. The 1st Defendant in this matter moved the court vide an application dated 16th August 2011 seeking for an order that the Plaintiff's suit be dismissed with costs to the 1st Defendant for want of prosecution. The Application was heard inter partes and a Ruling was delivered by Hon. Justice Meoli on 21st February 2012 in following terms:

“However, dismissal of a suit ought not to be done willy willy. I would therefore disallow the Defendant's application but direct the Plaintiff to take necessary steps to have the matter listed for hearing within six months of today's date, failing, which the suit will stand dismissed.”

5. The Defendant now wants a declaration that this suit stood dismissed after the lapse of six months from 21st February 2012 when the Ruling was delivered.

6. The parties agreed to dispose of the Preliminary Objection by way of written submissions. The Plaintiff filed his written submissions on 13th December 2012 while the 1st Defendant filed his written submissions on 19th December 2012. Counsel for the 1st Defendant submitted that this court delivered its Ruling on 21st February 2012 in which it ordered that this suit should be prosecuted within 6 months and not that a hearing date should be fixed within that period.

7. According to the 1st Defendant's counsel, this suit stood dismissed upon the expiry of the period of time that was granted by the court. Any attempts to have the suit prosecuted after 6 months would be an exercise in futility.

The 1st Defendant's counsel further submitted that even though the court granted indulgence to the Plaintiff who was indolent, the Plaintiff has failed to prosecute the suit within the period granted to him.

8. Other than stating that the 1st Defendant's Preliminary Objection is bad in law, vexatious, frivolous and an abuse of the court process, the Plaintiff has not filed any affidavit to explain why he did not fix the matter for hearing within six months as ordered by Hon. Justice Meoli.

9. In his submissions, the Plaintiff's advocate states that he moved the registry on 27th April, 2012 and had the matter fixed for hearing on 3rd September 2012 on which day the matter did not proceed for hearing. The said date of 3rd September 2012 was outside the period of six months that the court had ordered that the matter be fixed for hearing.

10. The Plaintiff's counsel further submitted that Section 19 (1) and (2) of the Environment and Land Court Act, 2011 obligates this court to act expeditiously and without undue regard to technicalities of procedure. The said section, according to counsel, excludes the court from strictly employing the rules of evidence. According to counsel, Section 19 also provides that this court shall not be bound by the procedure laid down by the Civil Procedure Act and that the court shall be guided by the principles of natural justice.

11. The Plaintiff's counsel further relied on the provisions of Section 13 of the Environment and Land court Act, 2011 which provides that in the exercise of its jurisdiction, this court shall be guided by the principles of land policy under Article 60 (1) of the Constitution and the principles of judicial authority under Article 159 (2) of the Constitution.

12. The Submissions by the Plaintiff's counsel on the provisions of the law are right save to point out that section 19 (2), (3) and (4) of the Environment and Land court Act No. 19 of 2011 was amended by Act number 12 of 2012. Consequently, this court is bound by the rules of Evidence and the Civil Procedure Act.

13. However, the present issue is not whether this court is bound by the rules of evidence or the Civil Procedure Act. The issue is whether the Plaintiff complied with the order of Justice Meoli of 21st February 2012 which directed that this matter be set down for hearing within six months.

14. My understanding of the order of the court of 21st February 2012 is that the 1st Defendant's application for dismissal of the Plaint for want of prosecution was dismissed by the court with a rider that the suit should be fixed for hearing within six months. If the suit is not fixed for hearing within the six months, then the same stood dismissed for want of prosecution. Six months lapsed on 20th August 2012. The date for hearing of the suit should have been on or before 20th August 2012. That was the order of the court.

15. The Plaintiff has not explained why he fixed the matter for hearing on 3rd September 2012, way outside the period of six months. He does not even say that there was no date available in the registry on or before 20th August 2012. And even if it was to be argued that the earliest date the Plaintiff could have obtained for hearing at he registry was on 3rd September 2012, the Plaintiff does explain the efforts he undertook to inform the registry or the court that he had been directed by the court to fix the matter for hearing within six months.

16. The Plaintiff has also failed to take the advantage of the provisions of Order 50 Rule 6 of the Civil Procedure Rules, 2010 which provides that 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 as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until the expiration of the time appointed or allowed.

While addressing the issue of extension of time, the court in **Patman -Vs- Cumaray (1964) 3 ALL ER??** stated as follows:

“The rules of this court must prima facie be obeyed and in order to justify a court in extending time during which step in procedure requires to be taken, there must be material on which the court can exercise its discretion if the law were otherwise a breach would have on unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time liable for the conduct of litigation.”

I entirely agree with the above proposition.

18. It is true that the principle objective of the Environment and Land Court Act No. 19 of 2011 is to enable this court to facilitate the just, expeditious, proportionate and accessible resolution of disputes. That principle objective cannot be accomplished if this court does not enforce court orders.

19. In the absence of a plausible explanation as to why this suit was not fixed for hearing within six months as ordered by the court, I uphold the 1st Defendant's Notice of Preliminary Objection dated 23rd November 2012.

Dated and delivered at Malindi this **19th** day of, **April**, 2013.

O. A. Angote,
JUDGE