



**Vincent Amolo Ambani t/a Fast Track Investments v National Bank of Kenya Limited
(Environment & Land Case 375 of 2015) [2022] KEELC 3017 (KLR) (18 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3017 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 375 OF 2015**

EO OBAGA, J

MAY 18, 2022

BETWEEN

VINCENT AMOLO AMBANI T/A FAST TRACK INVESTMENTS .. PLAINTIFF

AND

NATIONAL BANK OF KENYA LIMITED DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated October 14, 2021 in which the defendant/applicant seeks orders setting aside *ex-parte* proceedings of October 13, 2021 and for leave to file a further list of documents.
2. The applicant's counsel depones that on the date of hearing, he received communication that judges had a meeting and that court sessions were to start around 9.30 am. For this reason, he logged in to other courts as he had a number of matter before other courts. When he was through with matters from other courts, he tried to log in court for purposes of applying for adjournment but he had network challenges. He sent his clerk who came and told him that he had been to court where he found the defendant's witness testifying. When he came to court, he found that the defendant's witness had completed giving evidence.
3. The advocate further states that on the previous day, he had written a letter to the plaintiff/s advocate informing him of his intention to adjourn the case and need for leave to file a further list of documents. It is for this reason that the advocate seeks to have the proceedings of October 13, 2021 set aside and leave granted to file a further list of documents.
4. The applicant's application is opposed by the plaintiff/respondent through a replying affidavit sworn on November 15, 2021 by the respondent's advocate. The deponent states that the hearing date of October 13, 2021 had been taken by consent and that the plaintiff's advocate ought to have applied for leave to file a further list of documents when the hearing date was fixed on June 30, 2021.



5. The deponent further states that he received the letter from the applicant's lawyer after the case had already been heard. He states that the applicant's advocate should have given this case priority as it was the first one in his diary. He further contends that there is an emerging practice where advocates fail to attend court and later on claim that they had network challenges as they know that it will be difficult to verify such claims.
6. The deponent further states that this is a 2015 case and setting aside the proceedings will further delay the case.
7. I have considered the applicant's application as well as the opposition to the same by the respondent. I have also considered the submissions by the parties. The issues which emerge for determination are firstly whether the applicant has demonstrated sufficient cause to warrant this court to exercise its discretion to set aside the *ex-parte* proceedings. Secondly, whether the applicant should be allowed to file additional documents.
8. It is not disputed that there was communication on October 13, 2021 that judges were to start court sessions at around 9.30 am. For this reason, the applicant's counsel logged in to other courts. The advocate for the applicant had a number of matters in various courts as shown in the extract from his diary.
9. When he was through with other matters, he tried to log in but faced network challenges. It is common knowledge that advocates face network challenges. We see on daily basis advocates trying to address the court in vain due to network challenges. When this happens, one cannot be blamed or it should not be taken as an excuse. In the instant case, the applicant's advocate had communicated his intention to adjourn the matter via e-mail. The respondent's advocate states that he received this letter late. It is expected that one has to keep checking his or her mails regularly because e-mails have become a crucial medium of communication. Even court processes are served via e-mail. If the respondent's lawyer did not open his e-mail, he should not blame this on the applicant's advocate.
10. In *Shah v Mbogo & another* [1967] EA 116 it was held that the discretion to set aside *ex-parte* proceedings is intended to avoid injustice or hardship resulting from accidental inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise, to obstruct the cause of justice.
11. I have carefully considered the reasons put forth by the applicant's counsel. I am convinced that the applicant has shown sufficient cause for this court to exercise its discretion in his favour. There is need to allow the applicant to file a further list of documents. The applicant is not a person out to obstruct justice. Failure of the advocate to be in court has been explained satisfactorily. Non attendance was not deliberate. I therefore find that the applicant's application is well merited. The same is allowed with the result that the proceedings of October 13, 2021 are hereby set aside. The applicant is granted leave to file a further list of documents within 14 days. The applicant shall pay the respondents costs of Kshs 20,000/= payable before the next hearing date failing which the *ex-parte* proceedings shall be reinstated automatically.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF MAY, 2022

E. OBAGA

JUDGE

In the virtual presence of;



Mr. Mogambi for Plaintiff.

Ms. Achesa for Mr. Mwangi for Defendant.

Court Assistant -Albert

E. OBAGA

JUDGE

