



Karugu (Suing as the personal representative of Peter Karugu Guandai –Deceased) v Kiburu & 3 others (Environment & Land Case 1375 of 2014) [2022] KEELC 2873 (KLR) (12 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2873 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1375 OF 2014**

**LN MBUGUA, J
MAY 12, 2022**

BETWEEN

WINFRED NYAMBURA KARUGU (SUING AS THE PERSONAL REPRESENTATIVE OF PETER KARUGU GUANDAI – DECEASED) APPLICANT

AND

**LYDIA WAMBUI KIBURU 1ST RESPONDENT
RISER ENTERPRISES LIMITED 2ND RESPONDENT
SIMON NJUGUNA KARIUKI 3RD RESPONDENT
MARY NJERI MBURU 4TH RESPONDENT**

RULING

1. The plaintiff's closed their case on October 31, 2018 while 1st defendant's case was closed on December 3, 2019. On November 4, 2021, the court declined to grant any further adjournment and directed parties to file their submissions. The 2nd, 3rd & 4th defendants have now filed their respective applications to be allowed to tender their evidence.
2. The application dated December 9, 2021 filed by 2nd and 3rd defendants seeks the following orders:
 1. Spent.
 2. That temporary orders of stay of proceedings be granted pending hearing and determination of this application.
 3. That this case be re-opened and be heard *de-novo*.



4. That in the alternative, this case be re-opened and the 2nd and 3rd defendants be granted a chance to be heard on merits.
 5. That this honourable court be pleased to grant any other alternative order(s) it deems fit.
 6. That costs of this application be in the cause.
3. The applicants contend that the matter was coming up before this court on November 4, 2021 for directions to confirm whether the matter would proceed *de novo* or proceed from where the trial judge left off. That the court proceeded to close their case and they desire to be heard. In the alternative, they are seeking reopening of the case. They stand to be prejudiced if their application is not allowed.
 4. The other application is also dated December 9, 2021 filed by the 4th defendant, who seeks similar orders to those of the 2nd & 3rd defendants.
 5. The plaintiff contends that the 2nd – 4th defendants are abusing the court process since the record of the court indicates that they do not want to proceed with the matter.
 6. I have considered all the arguments raised herein. The plaintiff testified way back on March 16, 2017 and was cross examined on October 31, 2018 when his case closed. The defence of 1st defendant was undertaken on December 3, 2019 when their case was closed. Since then, the 2nd -4th defendants have never been ready to proceed. Nowhere was the matter taken out of the cause list on November 4, 2021. The court had also noted that the 2nd-4th defendants were absent yet they had already been given two previous last adjournments, “Justice delayed is justice denied” so goes a 17th Century Maxim.
 7. In the case of *Raila Odinga & 5 others v IEBC & 3 Others* (2013)eKLR, the Supreme Court stated that:

“The parties have a duty to ensure they comply with their respective timelines and the court must adhere to its own... and no extra burden should be imposed on any party or the court as a result of omissions or characteristics which were foreseeable and could have been avoided...”

Also see section 1(A) of the *Civil Procedure Act*.”
 8. Having regard to all the material presented before me I allow the two applications with very strict conditions as follows:
 - 1) The directions on filing of submissions given on November 4, 2021 are hereby set aside.
 - 2) The case is re-opened to enable the 2nd-4th defendants present their case.
 - 3) That the case once listed for hearing shall not be adjourned at the instance of the 2nd-4th defendants.
 - 4) That the 2nd-4th defendants are to pay throw away costs to the plaintiff amounting to Kshs 20,000/- (for each 2nd & 3rd defendant on one hand and 4th defendant on the other hand).
 - 5) The 2nd – 4th defendants are to bear costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE



In the presence of:-

Koech for the Plaintiff

Mwandumbo for the 1st Defendant

Mwaura for the 4th Defendant

Court Assistant: June Nafula

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