



Ray Pharmaceuticals Limited & 6 others v County Government of Kiambu (Environment & Land Case 1191 of 2013) [2022] KEELC 2724 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEELC 2724 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1191 OF 2013
LC KOMINGOI, J
JUNE 23, 2022**

BETWEEN

**RAY PHARMACEUTICALS LIMITED 1ST PLAINTIFF
METROPOL ENTERPRISES LIMITED 2ND PLAINTIFF
VITAFOAM PRODUCTS LIMITED 3RD PLAINTIFF
NCP PAPER MILLS LIMITED/VITAFOAM PRODUCTS LIMITED 4TH
PLAINTIFF
ANJU MOHANLAL SHAH 5TH PLAINTIFF
JINIT MOHANLAL SHAH 6TH PLAINTIFF
MOHANLAL DHARAMSHI SHAH 7TH PLAINTIFF**

AND

COUNTY GOVERNMENT OF KIAMBU DEFENDANT

RULING

1. This is the notice of motion dated March 7, 2022 brought under article 50 of *the Constitution*, 2010, under section 1A, 1B and 3A of the *Civil Procedure Act* and any other enabling provisions of the law:-
2. It seeks:-
 1. Spent.
 2. Spent.
 3. That, the exparte hearing and all consequential orders delivered on December 2, 2021 be set aside and the matter be heard a fresh on merit.



4. That costs be provided for.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 13.
4. The application is supported by the affidavit of David Mararo, the defendant's legal counsel, sworn on the March 7, 2022.
5. The application is opposed. There is a replying affidavit sworn by John Mulika Mbaluto, the plaintiffs' advocate on the March 24, 2022.
6. The court with the consent of the parties directed that the notice of motion be canvassed by written submissions.
7. I have considered the notice of motion and the affidavits in support. I have also considered the response thereto, the written submissions and the authorities cited. The issue for determination is whether this application is merited.
8. It is the defendant's/applicant's case that counsel could not attend court on December 2, 2021 due to indisposition. He has annexed to his affidavit a letter from the doctor showing that he had been treated at the defendant's Department of Health Services and had been given sick off. It is further counsel submission that the defendant will suffer great prejudice if the proceedings of December 2, 2021 are not set aside.
9. The plaintiffs/respondents on the other hand contend that the applicant has not met the threshold of sufficient cause or good cause to warrant the court's discretion in granting the remedy of setting aside the proceedings of December 2, 2021.
10. I have gone through the court record. On the October 6, 2021 this court was not sitting. The matter was placed before Oguttu Mboya J who set down the hearing of the suit for December 2, 2021. Mr Mararo for the defendant was present when this date was given.
11. I agree with counsel for the plaintiffs/respondents that this application has been brought after a long delay. It has been brought almost three (3) months after the proceedings of December 2, 2021. No explanation has been given.
12. Be that as it may, counsel for the defendant/applicant has exhibited a letter from the doctor confirming that he was indisposed on the December 2, 2021. This court gives counsel the benefit of doubt in finding that his absence was not deliberate and or intentional. He however ought to have informed counsel for the plaintiffs in good time.
13. I find merit in this application and grant the orders sought in terms of prayer no 3 of the notice of motion on condition that the defendant pays the plaintiffs throw away costs of Kshs 15,000. The costs of this application do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 23RD DAY OF JUNE 2022.

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Mbaluto for the Plaintiffs

Mr. Mararo for the Defendant



Steve - Court Assistant

