



REPUBLIC OF KENYA



KENYA LAW
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Kitur & another ((Suing on behalf of the Estate of Stephen Kitur)) v Kitur (Environment & Land Case 68 of 2021) [2022] KEELC 2463 (KLR) (19 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2463 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 68 OF 2021**

MN MWANYALE, J

JULY 19, 2022

(FORMERLY ELDORET ELC CASE NO 231 OF 2017)

BETWEEN

CHARLES KITUR 1ST APPLICANT

ELIZABETH JELAGAT 2ND APPLICANT

(SUING ON BEHALF OF THE ESTATE OF STEPHEN KITUR)

AND

HILLARY KITUR RESPONDENT

RULING

1. The Plaintiffs/Applicants herein who are the Defendants in the Amended Defence and Counter Claim moved the Court vide application dated 3rd June 2022 seeking orders that;
 1. Spent
 2. That this Honourable Court may be pleased to review the orders made on 25th May 2022 and further grant leave to the Applicant/Plaintiffs to file reply to Amended Defence and Counter-claim and comply with Order 11 out of time.
 3. That the costs of this Application be in the cause.
2. The Application is based on the following grounds and on the Supporting Affidavit of Titus K. Bitok;
 - a) That the Court had granted the Plaintiff 21 days to file reply to Counter Claim and comply with Order 11.
 - b) That when the matter came up for further mention on 25th May 2022, the Plaintiff's Counsel had given instructions to another Advocate to hold their brief. However due to



communication breakdown, the Advocate holding brief failed to seek a further 7 days to comply with Court orders.

- c) As a result, the Plaintiffs were locked out of complying with the Court Orders made on 28th March 2022.
 - d) That the Plaintiffs will be greatly prejudiced if not accorded a chance to comply since the mistake was solely the Advocates and ought not be visited upon innocent litigants who were present on 25th May 2022.
3. The Court's directions given on 10th June 2022 were that parties canvass the Application by way of written submissions. However, none of the parties complied.
 4. Nevertheless, I shall proceed to render my ruling as hereunder.
 5. The main issue to be determined herein is whether the Court may grant leave again to the Plaintiffs to file reply to counterclaim.
 6. Order 7 rule 11 of the *Civil Procedure Rules* provides;

“ Any person named in a defence as a party to a counterclaim thereby made may, unless some other or further order is made by the Court, deliver a reply within fifteen days after service upon him of the counterclaim and shall serve a copy thereof on all parties to the suit.”
 7. The Defendant/Respondent herein was granted leave to file Amended Defence and Counterclaim on 26th November 2020 pursuant to his application dated 5th November 2020. All along from the record, the Plaintiffs were aware of an existing Amended Defence and Counterclaim.
 8. The Plaintiffs/Applicants herein are mentioned as Defendants in the Counterclaim hence they had fifteen days to file and serve their reply as required by Order 7 rule 11 of the *Civil Procedure Rules* cited herein above.
 9. It is thus clear that 15 days period had lapsed. Despite the Plaintiffs not complying with the period set by the law, this Court indulged the Plaintiffs a further 14 days to file reply to counterclaim and 21 days to comply with order 11 upon filing of the reply. This indulgence was informed by the Plaintiff's Counsel's oral application made on 28th March 2022 approximately over one (1) year since the Amended Defence and Counterclaim was filed and served.
 10. Once more, the Plaintiffs failed to comply hence the present application. In this application, the Plaintiffs are seeking review of Orders made on 25th May 2022 and extension of time to comply with Orders made on 28th March, 2022.
 11. The Supreme Court of Kenya in *Nicholas Kiptoo Arap Salat -vs- IEBC and 7 other* (2014) eKLR set out guiding principles on the question of extension of time as follows;
 - i) “Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court.
 - ii) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court.
 - iii) Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.



- iv) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court.
 - v) Whether there will be any prejudice suffered by the Respondents if the extension is granted.
 - vi) Whether the application has been brought without undue delay and
 - vii) Whether in certain cases, like election Petitions, public interest should be a consideration for extending time.”
12. After keen perusal of the application before me, no reason or the delay in filing reply to counterclaim has been floated by the Applicants to enable the Court consider whether it is reasonable to the satisfaction of this Court as guided by the Apex Court in the Salat case cited above.
 13. I also note that his dispute commenced in 2017, 5 years ago and has never taken off until withdraw of the suit by the Plaintiffs on 14th March 2022 after dragging the Defendant/Respondent to Court all this while. Allowing the Plaintiffs more time to comply with orders of this Court again would lead to delay of justice which will be prejudicial to the Defendant/Respondent herein.
 14. Court orders are not made in vain, they are made to be obeyed. The dignity of our Courts including this Court are to be upheld at all times. Court orders are not meant for cosmetic purposes, they are serious decision that are meant to be and ought to be complied with strictly as was held in *Teachers Service Commission –vs- Kenya National Union of Teachers and 2 Others* (2013) eKLR as follows;

“A Court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought, and with circumspection. It must therefore be complied with and it is in the interest of every person that his remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the Court, the avenues for challenging it are also set out in the law. Defiance is not an option.”
 15. Continuous defiance of the Courts directives by the Plaintiffs have not been explained at all, as a consequence, I conclude that the Applicants/Plaintiffs have not only been injudicious but also brazen in flouting the directions of this Court. They are therefore underserving of this Court’s discretion.
 16. Continuous defiance of the Court’s directives by the Plaintiffs have not been explained at all, as a consequence, I conclude that the Applicants/Plaintiffs have not only been injudicious but also brazen in flouting the directions of this Court. They are therefore underserving of this Court’s discretion.
 17. I find no merit in the application and dismiss it accordingly with costs to the Respondent.
 18. It is so ordered.

DATED AT KAPSABET THIS 19TH DAY OF JULY 2022.

**HON. M. N. MWANYALE,
JUDGE.**

In the presence of;

Mr. Bitok for Plaintiff/ Applicant

Ms. Chebitok for Defendant/Respondent

