



**Ngugi & 14 others (Others to be stated) v Komarock Building Development Ltd & another; Amukhuma (Intended Interested Party) (Environment & Land Case 283 of 2013) [2022] KEELC 14482 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14482 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 283 OF 2013  
LN MBUGUA, J  
OCTOBER 27, 2022**

**BETWEEN**

**JOSEPH IRUNGU NGUGI ..... 1<sup>ST</sup> PLAINTIFF  
MANENO GESIMBA ..... 2<sup>ND</sup> PLAINTIFF  
TERESIA NDILA KYALO ..... 3<sup>RD</sup> PLAINTIFF  
JACOP MALANDA OKWEMBA ..... 4<sup>TH</sup> PLAINTIFF  
SIMON MAINA MUTAHI ..... 5<sup>TH</sup> PLAINTIFF  
JOAHUA MUKINYO THAIRO ..... 6<sup>TH</sup> PLAINTIFF  
EVANS KHAMATI ACHIANGA ..... 7<sup>TH</sup> PLAINTIFF  
ERIC MWENDA ..... 8<sup>TH</sup> PLAINTIFF  
MOHAMED YUSUF GITHIO ..... 9<sup>TH</sup> PLAINTIFF  
GEDEON KIBE GITHIAGA ..... 10<sup>TH</sup> PLAINTIFF  
BEARICE MUTUA ..... 11<sup>TH</sup> PLAINTIFF  
SAMMY NDIITHI MWICHURI ..... 12<sup>TH</sup> PLAINTIFF  
MOSES KIMOTHO MWICHURI ..... 13<sup>TH</sup> PLAINTIFF  
PHILIP MUNYASIA MUTUA ..... 14<sup>TH</sup> PLAINTIFF  
MUSAMALI KIZITO ..... 15<sup>TH</sup> PLAINTIFF  
OTHERS TO BE STATED**

**AND**

**KOMAROCK BUILDING DEVELOPMENT LTD ..... 1<sup>ST</sup> DEFENDANT**



VIOLET WANJIRU KUNGU ..... 2<sup>ND</sup> DEFENDANT

AND

CLEMENT AMUKHUMA ..... INTENDED INTERESTED PARTY

### RULING

1. The recent litigation history of this matter is that on June 22, 2020 the hearing of this suit was adjourned to enable the plaintiffs file and serve an amended plaint. The case was then re-scheduled for hearing on May 31, 2021. Come the date of May 31, 2021 and the plaintiffs were not ready to proceed. The court indulged them with a last adjournment and the hearing was again re-scheduled to December 9, 2021.
2. On December 9, 2021, the plaintiffs were yet again not ready to proceed. The court declined to adjourn the case and proceeded to hear the counter-claim of the 2<sup>nd</sup> defendant after the court was informed that the 1<sup>st</sup> defendant did not enter appearance. The court then proceeded to set a date for delivery of the judgment on February 23, 2022.
3. The court has since been barraged with a flurry of applications, the bulk thereof emanating from the plaintiffs side. There is an record an application dated December 9, 2021 for the firm of KW EW Advocates to cease acting for the plaintiff; an application dated February 2, 2022 by Sichangi and Associates, advocates for the plaintiff for the stay of these proceedings and for the case to start denovo, and the application dated February 9, 2022 by Thuita, advocates for the plaintiff for the court to recuse itself in this matter.
4. The 1<sup>st</sup> defendant filed an application dated December 20, 2021 for stay of these proceedings, the setting aside of the *ex parte* proceedings and to be allowed to file their pleadings.
5. There is another application dated January 31, 2022 filed by Sichangi Advocates seeking orders *inter-alia*, that one Clement Eshibukho Amukhuma be joined in these proceedings as an interested party.
6. At some point, the advocates for the parties informed this court that they were exploring settlement but there were no fruitful results.
7. On June 21, 2022, the application dated January 31, 2022 was allowed in terms of prayer No 3 (joinder of the interested party) by consent.
8. Thereafter, the parties embarked on having the application of December 9, 2021 prosecuted first ostensibly to expedite the progression of the suit.
9. I find that this is an appropriate case for the court to invoke active case management principles. In the case of *Lawrence Kinyua Mwai v Nyariginia Farmers Co Ltd & another* [2019] eKLR, this court rendered itself thus in a case where there were about 18 pending applications.

“Active case management enhances processing efficiency, promotes court control of cases, and provides judicial officers with the tools that may be used to dispose off a case efficiently. These techniques reduce delays and case backlogs, and provide information to support the strategic allocation of time and resources - all of which encourage generally better services from courts.



Active case management is also the effort by courts to handle cases in such a manner that they are resolved fairly and as promptly and economically as is reasonable in the circumstances of the case. The fairness part can be found within the notion of procedural justice while the promptness and economics part of the case management can be found within the notion of the efficiency of justice. Efficiency of justice implies that justice is done at reasonable costs to the parties and the court and within a reasonable time, that is without an abnormal delay. Procedural justice concerns the fairness, consistency and the transparency of the processes by which progress in a case is made”.

10. Similarly, this is a situation where the court shall deal with the pending issues at once, even though the court has been urged to just deal with the application of December 9, 2022. In so doing, the court has taken into consideration that parties have already consented to a new party being joined in these proceedings. By and large, the new party ought to be given a chance to prosecute his case and this can only happen if the hearing is conducted afresh. In essence, it is not tenable to deliver the judgement based on the proceedings of December 9, 2021.
11. In the prevailing circumstances, I find it expedient to invoke the “*audi alteram partem rule*”, the right to be heard in so far as the case of 1<sup>st</sup> defendant is concerned. This is in tandem with upholding the fundamental principle of justice enunciated in *Halsbury Laws of England*, 5th Edition 2010 vol 61 at para 639.
12. In the final analysis, I proceed to give orders as follows:
  1. The applications dated December 9, 2021, December 20, 2021 and February 2, 2022 are allowed with costs in the cause. Thus the proceedings of December 9, 2022 are hereby set aside.
  2. The prayers sought in the application of January 31, 2022 (prayer No 4, 5 and 6) are disallowed.
  3. The new party (Clement) and the 1<sup>st</sup> defendant are directed to file and serve their pleadings forthwith.
  4. This court proceeds to recuse itself from these proceedings. In that regard the application dated February 9, 2022 is marked as spent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

**Kisuya Kwobo for Plaintiffs**

**Mbindyo for 2<sup>nd</sup> Defendant**

**Sichangi for the Interested Party**

**Court assistant: Eddel**

