



Mbae (suing as the legal representative of the Estate of Silas Judah Mbae (Deceased) & another v Mwamba & 5 others; M'Arimi & another (Interested Parties) (Environment & Land Case 42 of 2018) [2022] KEELC 13724 (KLR) (19 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13724 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 42 OF 2018
CK NZILI, J
OCTOBER 19, 2022

BETWEEN

KENNON MWITI MBAE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SILAS JUDAH MBAE (DECEASED)) 1ST PLAINTIFF
KENYA DEPOSIT INSURANCE CORPORATION 2ND PLAINTIFF

AND

ZAVERIO KIAMBI MWAMBA 1ST DEFENDANT
LAND REGISTRAR IMENTI NORTH DISTRICT 2ND DEFENDANT
LAND SURVEYOR IMENTI NORTH DISTRICT 3RD DEFENDANT
ATTORNEY GENERAL 4TH DEFENDANT
CONSOLATA KANUNGO MWAMBA 5TH DEFENDANT
GREGORY KIMATHI MWAMBA 6TH DEFENDANT

AND

Z NYAMU M'ARIMI INTERESTED PARTY
FESTUS RIUNGU RIMBERE INTERESTED PARTY

RULING

1. By an application dated 10.6.2022, the 5 & 6 defendants seek for review of the orders made on 3.2.2022 and for leave to file a defense and counterclaim out of time. The application is supported by an affidavit worn by Consolata Kanungo Mwamba on the even date.



2. The grounds are that; the applicants were awaiting for current search certificates and copies of green cards which may have been stored in Meru Cr. Case No. 35 of 2019 against the 1st defendant and 1st interested party whose retrieval has not been easy; they are in occupation and locking them out of the case will be prejudicial ;that the delay in filing the defense and counterclaim and the procedural defects are not fatal and it is only in the interest of justice that substantial be attained by all parties.
3. The 2nd and 3rd plaintiffs opposed the application through grounds of opposition dated 14.7.2022 for reasons that no new and important evidence not within the knowledge of the applicants at the time the orders were made; there has been inordinate delay of 4 months and no apparent error or omission on the part of the court has been pointed out.
4. Through an application dated 29.11.2021 the 5th & 6th defendants sought to be joined as parties in this suit and for leave to file a defence and counterclaim. The court allowed the application on 30.11.20 and directed that the defense and counterclaim be filed by 15.12.2021 and the rest of pleadings by the plaintiffs and interested parties be filed by 15.1.2022.
5. When the matter came up on 3.2.2022 for case conference, the court was asked by the 1st plaintiff and the 1st interested party to find the defence and counterclaim filed out of time and lacking supporting documents. Miss Cheplimo for the 2nd plaintiff concurred with the request. Kieti for 2nd – 4th defendants submitted that the defense and counterclaim lacked a verifying affidavit hence it was incompetent.
6. There was no appearance by the 5th & 6th defendants to explain why the documents were filed out of time and were incomplete, yet the date and directions were taken in the presence of Mr. Mwarania advocate. The court proceeded to accede to the request and struck out the documents for being filed late and being incomplete.
7. Parties were given a mention date for 14.3.2022 for further directions as to compliance with Order 11 Civil Procedure Rules. The 5th and 6th defendant failed to attend court and the matter by consent of parties was fixed for hearing on 13.6.2022 since all the parties had complied with Order 11 Civil Procedure Rules. It is on the hearing date when the application herein was filed.
8. A party seeking for review under Order 45 of the Civil Procedure Rules and Section 80 of the Civil Procedure Act has to demonstrate new and important issues which were not in its possession and could not be obtained with due diligence, that there is an error apparent on the face of it and lastly that there is sufficient cause or reason to review the order. Similarly, the application should be made without undue delay.
9. The order striking out the defence and counterclaim was made on 3.2.2022 while this application was filed on 13.6.2022. No explanation has been offered why there was a delay of four months. Secondly the applicants have not explained why they failed to attend court twice if at all they were keen to have their interests safeguarded through this suit. Thirdly the applicants have not explained why it was so difficult to file and sign a verifying affidavit and attach the annexures. Fourthly the court has been told the annexures have not been retrieved yet no letters have been attached showing when such a request for search and or retrieval of documents alleged held by the court in a criminal case. The applicants are the authors of their own misfortunes.
10. In *Rosemary Kabumba vs NBK* (2016) eKLR, the court held that failure to comply with court directives has consequences.
11. The court had ordered compliance within given time lines. The applicants did not attend court to explain their predicament then. In this application, the applicants are very silent on the prejudice



they have occasioned the court and the other parties for not taking court business seriously and the inordinate delay of the court processes. If the applicants were vigilant enough they would have retrieved the required documents on time.

12. Even though the applicants are undeserving of the orders sought and given the suit has not commenced, I exercise my discretion and hereby reviews the orders dated 3.2.2022. The defence shall be filed and served within 14 days from the date hereof accompanied by its supporting documents in line with Order 7 of the [Civil Procedure Rules](#).
13. Costs of the application to the plaintiffs and the interested parties.
Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 19TH DAY OF OCTOBER, 2022

In presence of:

C/A: Kananu

Murira for 5th & 6th respondents

Kieti for 2nd – 4th defendants

HON. C.K. NZILI

ELC JUDGE

