



The Liquidator for Mukungugu Farmers Cooperative Society v Gathua & 5 others (Environment & Land Case 26 of 2020) [2022] KEELC 13645 (KLR) (17 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13645 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 26 OF 2020
FM NJOROGE, J
OCTOBER 17, 2022**

BETWEEN

THE LIQUIDATOR FOR MUKUNGUGU FARMERS COOPERATIVE SOCIETY PLAINTIFF

AND

**RICHARD K. GATHUA 1ST DEFENDANT
EUTYCUS THIONG’O 2ND DEFENDANT
ANTHONY N. KIARIE 3RD DEFENDANT
JOHN K. NJOROGE 4TH DEFENDANT
BERNARD K. KARIUKI 5TH DEFENDANT
SALOME WA. CHEGE 6TH DEFENDANT**

RULING

1. This case proceeded to hearing on March 1, 2022 when PW1 testified and was stood down. On May 11, 2022 however the plaintiff filed further documents as per the list of that date. That list is objected to by Ms Mbeche for the reasons that the plaintiff has testified and also that the defendants would be prejudiced if that bundle was admitted in the record without any opportunity of their filing their own bundle to counter it.
2. Mr Kariuki admits that the bundle filed by the plaintiff was filed with no leave of court, and that no leave was sought subsequent to its filing. Today, Mr Kariuki did not apply orally for the bundle to be deemed as properly filed and served and he only rose to proceed with the evidence of PW1, evincing the assumption that the documents were properly on record and that no leave of court is needed, and no prejudice would be occasioned to the defendants by reliance thereon. It is clear by the filing that the plaintiff intends to rely on the entire bundle of documents filed.



3. This court has said on numerous occasions that when a party is late in filing their documents beyond the timelines set by Rules of by Order of court, and has filed them out of time, the very first thing to do at the next mention or hearing of the case or before that date, is to make an application formal or oral for the deeming of those documents as properly filed and served, if at all they have been served as in the instance case.
4. Failure to do so, and attempts to rely on such documents filed late is the indicative of assumption by parties that rules of the Court or Orders made do not matter at all. The consequence of allowing the filing of documents at will and at any time without regard for timelines set out in the Rules of the court or the Order of court is a haphazard dealing of the case, adjournments and delays. This is hardly an auspicious outcome for a justice system that is seeking to clear its case backlog and it must be discouraged.
5. This hearing was scheduled for today and the plaintiff has had 5 long months to prepare and to notify others to prepare for the hearing, and deeming the documents filed on May 11, 2022 as properly filed and allowing the PW1 to rely on them without any benefit if joinder from the defendants would be prejudicial to the latter. It should not be asked why, the documents having been served upon Ms Mbeche's firm 5 months ago, she would not be ready to proceed to hearing today in the event they are deemed as properly filed and served.
6. In my view, the objection is properly premised on the now trite proposition that documents filed without leave of court are not properly on the record. This court cannot even see them leave alone rely on them.
7. The responsibility was on the plaintiff to get them regularised, and an oral application such as that Mr Kariuki now makes, albeit after Ms Mbeche has objected to the bundles' presence on the record, cannot suffice to appease the demands of justice to the extent of all parties and court being able, in just one day, to admit them and deem them property filed and subsequently have the hearing proceed.
8. Consequently, I uphold Ms Mbeche's objection. I also strike out the plaintiff's further list of documents dated May 10, 2022 and the attached bundle and I order the plaintiff and the defendants to proceed with the hearing as scheduled, with only the documents that were on the record as at March 1, 2022.

Dated, signed and issued at Nakuru in open court on this 17th day of October, 2022.



**MWANGI NJOROGE
JUDGE, ELC, NAKURU**

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