



Njoroge & 2 others v Musa Njuguna t/a Charismata Ministries Network & 2 others (Environment & Land Case 129 of 2019) [2022] KEELC 13639 (KLR) (12 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13639 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 129 OF 2019
FM NJOROGE, J
OCTOBER 12, 2022**

BETWEEN

**MOSES P. N. NJOROGE 1ST PLAINTIFF
JIM WOMBLE 2ND PLAINTIFF
DANIEL DAVID HINGA MUIRURI THE REGISTERED TRUSTEES NEW
TESTAMENT CHURCH OF GOD KENYA 3RD PLAINTIFF**

AND

**MUSA NJUGUNA T/A CHARISMATA MINISTRIES NETWORK ... 1ST
DEFENDANT
MUSA NJUGUNA MINISTRIES INC 2ND DEFENDANT
MUSA NJUGUNA THE REGISTERED TRUSTEE CHARISMATA REVIVAL
NETWORK 3RD DEFENDANT**

RULING

1. Today, this hearing has proceeded a great deal, with PW1 resuming his testimony from where he stopped on November 6, 2019, that is about three years ago.
2. Two other witnesses also testified to the end today. PW3 was said to be the last plaintiff's witness in the case. At the close of his evidence, Ms Wachira, evidently concerned that some documents were not filed by the time of giving the evidence by the witnesses in the case, including a new constitution and appointment/ordination documents of the three witnesses, applied orally for leave to file additional documents in the matter.
3. Her basis for making the said oral application is that those documents are available and that no prejudice would be occasioned to the defendants if this court granted her application.



4. This application naturally disconcerted the defendant's counsel Mr Githui who, in response, pointed out that a concession having been made that all the plaintiff's witnesses had been exhausted, there is no certainty as to how counsel for the plaintiffs would proceed in the event the application was allowed as prayed, and that, there is a risk of having to recall all the witnesses again.
5. The defendants, said Mr Githui would be prejudiced in that event. Mr Githui pointed out that the defendants had proceeded with the Plaintiff's case on the basis of the theme of lack of capacity, hence more prejudice would be caused if the orders were granted.
6. I have anxiously considered the application made by Ms Wachira and the response made by Mr Githui at length. This court must in all litigation balance between the rights of the plaintiffs and those of the defendants when an application such as the one currently under consideration has been made, for it is a court of justice.
7. On the one hand there is a plaintiff or plaintiffs who have had a case pending in this court since it was filed on September 1, 2002 that is about 18 years ago and who, it is to be presumed, have been anxious to have it expeditiously concluded. Those plaintiffs have also had 3 years from November 6, 2019 when PW1 last testified to prepare further for the hearing and conclusion of their case, including applying for leave to file new documents in the matter. They never made such an attempt.
8. On the other hand, after PW1 testified the defendants sought leave by a formal application to file their further documents in 2020. The defendants action never spurred the plaintiffs into taking a harder look at their own documents or correcting any gaps that may have been noted.
9. This is an adversarial situation that the litigants herein find themselves. Often the court finds itself between a rock and a hard place in making a decision on such an application as has been made by Ms Wachira for the defendants, for in its granting may lie much prejudice to one party – defendant who may have agreed to participate in the hearing on the basis, as in this case, of the perceived state of pleadings and evidence on record and no more. I do not agree with Ms Wachira that the grant of the application would not prejudice the defendants, for as Mr Githui asks on the defendant's behalf, how barring a consent, would those new documents be dealt with if not by recalling the plaintiffs' witnesses?
10. I do not also find that, given the three-year period that has lapsed since the last substantive hearing of the suit, the plaintiffs have given sufficient explanation for their delay in filing those documents that Ms Wachira now seeks to file.
11. As stated earlier, this is an old case and all the plaintiffs' witnesses having testified only more delay will ensue from the granting of Ms Wachira's application.
12. Justice must be served expeditiously as envisaged by article 159(1) of the *Constitution* and that article refers to justice for all including the defendants herein, who had two witnesses ready to testify today. I find that owing to the delay that may result in the disposal of this case if the application is granted, the application should not be granted. I find that it has no merit and I hereby decline to grant the leave sought.

DATED, SIGNED AND ISSUED AT NAKURU IN OPEN COURT ON THIS 12TH DAY OF OCTOBER, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

