



**Kipkulei & another v Chief Land Registrar & 10 others (Environment & Land Case E12 of 2022) [2022] KEELC 13576 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13576 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E12 OF 2022  
FM NJOROGE, J  
OCTOBER 6, 2022**

**BETWEEN**

**BENJAMIN KIPKECH KIPKULEI & ANOTHER ..... PLAINTIFF**

**AND**

**CHIEF LAND REGISTRAR & 10 OTHERS ..... DEFENDANT**

**RULING**

1. Mr. Rapando has applied that the plaintiff's submissions and Further Affidavit be expunged having been filed on 29/9/2022 instead of by the last date of 26/9/2022.
2. The other respondents support his application.
3. The Applicants on the other hand through Mr. Odhiambo their counsel on record maintain that the delay was minimal and was occasioned by ill health on the part of the 1<sup>st</sup> Plaintiff who was to execute the Further Affidavit. Mr. Odhiambo further submits that the delay that resulted is quite brief and that one day out of the two which can be termed as the delay period was taken up by the an official function at the Nakuru Law Courts whereupon the day was taken up on an official function and the documents could only be filed the next day, that is 29/9/2022.
4. Mr. Rapando in rejoinder thinks that the plaintiffs have been accommodated a great deal before and should not be accommodated any more, and no material has been placed before court to warrant the extension sought and in any event the extension of time was sought after the application to expunge was made and cannot be granted.
5. This court has advised counsel in many a matter, and it cannot simply be understood why that advise fails to take root, that whenever documents are filed late the very first application to make when the matter comes up next before court is an application for their admission into the record before any other application, such as Mr. Rapando's in the instance case, is made.



6. I have considered the application by Mr. Rapando and it is quite a weighty one. Striking out of the documents would leave the applicants with only the application for injunction and Supporting Affidavits attached thereto. Whatever persuasion they would have had on the court's reasoning will be lost, possibly forever, regarding this suit. On the other hand, admitting them may encourage parties deeper into indolence, if that was the cause of the delay, much to the detriment of the judicial process and other parties' rights. However, in the present case two main reasons have been advanced by Mr. Odhiambo in mitigation of the delay; first, that his client had health problems and second, that a function at the Law Court precincts took away one day out of the two.
7. I am ready to grant the 1<sup>st</sup> plaintiff the benefit of doubt regarding health issues as anyone may fall ill. I am also ready to accord the plaintiffs the benefit of doubt regarding inability to lodge the documents by the 28<sup>th</sup> September as that day was taken up by an official function this court is aware of and limited court services were offered which may have prejudiced the applicants. And finally I take notice that the time lost is relatively short.
8. As for the fact that the application for extension of time has been made after an application for expunging orders was made, I must warn Mr. Odhiambo that parties must not take it for granted that documents can be filed late and be automatically accepted by court without leave being sought since the parties are in disobedience of court orders by their late filing.
9. However, this court has noted that this is a very contentious matter and it is ready to refer to Articles 159(2) (d) and Sections 1A, 1B and 3A of the Civil Procedure Act for succour regarding the overriding objective of the Act that governs Civil Procedures that is, the just and expeditious disposal of matters before court.
10. I am also of the view that more delay may result from expunging the documents as more remedies are sought against the expunging order while an injunction application which has lain in the record for more than 5 months now, and which the said impugned documents were meant to help dispose of, remains unprosecuted.
11. It is therefore a more proportional application of principles that support the overriding objective of the Civil Procedure Act for this court to decline Mr. Rapando's application to expunge the impugned documents and to order that they be deemed as properly filed and served, the latter order which I hereby give to resolve the issue. The said submissions and Affidavit shall remain part of the Record and shall be relied on by the court in the injunction application Ruling.

It is so ordered.

**DATED, SIGNED AND ISSUED AT NAKURU IN OPEN COURT ON THIS 6TH DAY OF OCTOBER, 2022.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

