



**Aspire Limited v Zedka Technical Services Ltd & 2 others (Environment & Land  
Case 2 of 2021) [2022] KEELC 15254 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15254 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 2 OF 2021  
EO OBAGA, J  
NOVEMBER 24, 2022**

**BETWEEN**

**ASPIRE LIMITED ..... PLAINTIFF**

**AND**

**ZEDKA TECHNICAL SERVICES LTD ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISRTAR SERVCIES LTD ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of Notice of Motion dated 27<sup>th</sup> April, 2022 in which the 1<sup>st</sup> Defendant/  
Applicant seeks the following orders:-
  1. Spent
  2. Spent
  3. The honorable court be pleased to set aside its judgment delivered on 20<sup>th</sup> April, 2022 and all other consequential orders.
  4. That the hounourable court be pleased to hear this case on merit at the participation of the Applicant.
  5. Costs of this suit be provided for.
2. The Applicant contends that it was sued in this case alongside two others by the Plaintiff/Respondent but it was not served. The case proceeded ex-parte and a judgment was delivered in which the Respondent was declared as lawful owner of L.R No Eldoret Municipality Block 8/527 (suit property) despite the Applicant being the registered owner of the same.



3. The Applicant was incorporated on 13<sup>th</sup> May, 2011. Sometime in September 2021, the Respondent started fencing the suit property. The issue of fencing was reported to Naiberi Police station. The Applicant's representative and those of the Respondent were summoned to Naiberi Police station where the Respondent claimed that it was the registered owner of the suit property. It is at this time that the Applicant became aware of a suit filed against it.
4. The Applicant then instructed its lawyers who prepared a notice of appointment which could not be filed as the court file was said to be missing. The file was later found and the present application was filed. The Applicant proceeded to the lands office where they checked the records and found that the suit property was still in its name.
5. The Applicant states that it purchased the suit property from one Johannah Kiprotich Chebiego through Astire Limited at a consideration of 11,500,000/= on 4<sup>th</sup> July, 2013. Astire Limited had in turn purchased the land from John Birech Limo on 4<sup>th</sup> October, 2006. The Applicant contends that the Respondent's claim of ownership to the suit property is false.
6. The Applicant's application was opposed by the Respondent through a replying affidavit sworn on 10<sup>th</sup> May, 2022. The Respondent contends that the Applicant was served through substituted service as their address was not known. When the Applicant did not enter appearance, the Respondent applied for interlocutory judgment which was granted and the matter fixed for formal proof culminating in the impugned judgment.
7. The Respondent contends that the Applicant was aware of this suit and prepared a notice of appointment of advocates on 31<sup>st</sup> May, 2021. The Respondent denies that the file was missing as alleged by the Applicant. The Respondent states that it is the registered owner of the suit property and has the original title in its possession.
8. The Respondent further contends that the documents annexed to the Applicant's application are all forgeries aimed at hoodwinking the court and that the Applicant has no good defence. The Respondent argues that the deponent of the Applicant's supporting affidavit is a fraudster who is facing criminal charges of forgery in Eldoret Chief Magistrate's court No. E3469 of 2021.
9. The Respondent further states that whereas the Applicants claims that it was in existence in 2013, it was actually incorporated in 2015 and that it has deliberately failed to attach its certificate of title to this application. The Respondent further states that there is no company known as Astire Limited in the companies Registry and that the white card which is annexed to the Applicant's application is fraudulent and is subject of the criminal charges against the director of the Applicant.
10. I have carefully considered the Applicant's application together with the opposition to the same by the Respondent. I have also considered the submissions filed by the parties. The only issue which stands out for determination is whether the Applicant was served. After the response by the Respondent, it has turned out that the Applicant was served through substituted service by way of advertisement. This is after the Respondent failed to get the address of service of the Applicant. It is therefore clear that the judgment which the Respondent obtained was a regular judgment.
11. In seeking to set aside a regular judgment, the discretion of the court is called upon. This discretion should be exercised judiciously. It should not be exercised in favour of a party who is out to obstruct or delay the course of justice. When the court is exercising discretion, the intended defence should be one which raises triable issues. In as far as possible, the court should ensure that parties are heard on merits.
12. In the instant case, the Applicant has conceded in his submissions that they did not see the advertisement. What then should the court do? The court in the circumstances should weigh the



respective cases of the parties to ascertain if the Applicant has a defence which ought to be given opportunity to be urged before the court.

13. I have carefully perused the documents presented by the Applicant and the Respondent. The original owner of the suit property is John Rotich Limo. The Applicant claims to have purchased the suit property from Astire Limited which company purchased the land from John Rotich Limo. The Respondent claims to have purchased the suit property from John Rotich Limo. The documents further show that John Rotich Limo sold the suit property to Astire Ltd on 4/10/2006. The same John Rotich Limo is the one who purportedly sold the same land to Aspire Limited on 20/11/2006.
14. The transfer which is annexed to the Respondent's documents is not dated and was not witnessed as required. The transfer forms presented by the Applicant on the other hand were duly witnessed and have all the required ingredients such as the day book presentation number, registration fee receipt and date the transfer was received for registration. This is unlike the documents presented by the Respondent.
15. The two companies that is Astire Limited and Aspire Limited bear names which are similar. This is how fraudulent activities are carried out. The advocates who acted for John Rotich Limo are different. There is need to interrogate this. I therefore find that the Applicant's application is well merited. The same is allowed with the result that the judgement which was delivered on 20<sup>th</sup> April, 2022 together with all other consequential orders are hereby set aside. The Applicant is granted 14 days to file defence. The Plaintiff/Respondent shall pay the costs of this application to the 1<sup>st</sup> Defendant/Applicant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Menjo for Plaintiff/Respondent.

Ms. Munji for Mr. Nyamweya for 1<sup>st</sup> Defendant.

Court Assistant –Albert

**E. O. OBAGA**

**JUDGE**

**24<sup>TH</sup> NOVEMBER, 2022**

