



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 507 of 2003

2. Land & Environmental Law Division

Civil Practice and Procedure

3. Non-compliance of Order XR 20 Civil Procedure Rules

a) leave given to do discovering within a specified time.

b) Parties fail to do so

i) Defendant 3 and 5 files list only

ii) Defendant 6 files no

iii)

4. Finding

i) There was non compliance by defendant No.6

ii) Defendant No.7 – special procedure for grant required

5. Case law - Nil

6. Advocate:

J. Oduor for J. Oduor & Co. Advocates for the plaintiff No.1 – present

N. Kiangayu & Co. Advocates for the 1st and 2nd defendants – absent

J.N. Pareno for Parano & Co. Advocates for the 3rd parties- present

A . Waithaka Wachira & Co. Advocates for the 4th defendant – absent

Nyaga & Co. Advocates for the 5th defendant – present

Kangatta & Co. Advocates for the 6th defendant – present

Ms Mwaniki for the Attorney General - present

RAPHAEL KAWAI & OTHERSPLAINTIFF

VERSUS

JAYS SYNDICAT E & OTHERSDEFENDANT

RULING NO.IV

I: PROCEDURE

1. The suit before me concerns the ownership of land. There have been various application and litigation in this matter that emanated finally to the consolidation of two suits – Hccc507/03 and CCC266/05.

2. The parties appearance has been settled by this court. The plaintiffs No.1 M/s Belco Holdings Ltd filed an application under order 10 r 20 Civil Procedure Rules that concerns discovering and or non – compliance of this court orders.

3. The deputy registrar of this court made orders that the defendants do comply with discovering and or service relevant documents within a specified period. They failed to do so. I believe that the deputy registrar no longer has power to make such orders on a High Court file as the delegated powers under summons for direction had been removed from such deputy registrar.

4. The plaintiff made further requests to the duty judge Kihara Kariuki J and orders were given that there be compliance. None was given. The plaintiff came to this Land and Environmental Law Division to seek to enforce these orders under order 17 r10 Civil Procedure Rules it is only the judge who gave the orders who could and should make further orders. I declined not make orders.

5. Nonetheless on the 17 May 2007 the defendants entered into a consent that discovering be done. This was with the exception of the 1st 2nd defendant in Hccc266/05 and the 4th defendant and Hccc266/05 and the 4th defendant in Hccc266/05 and 3rd plaintiff in 507/03 who were represented by Njeru Kiagagi & Co. Advocates & M/s Waithera Wachira and Co. advocates as they were not present at the time though duly served and aware of the court proceeding.

6. The orders entered into was that the defendants were to make:-

“Discovering within 14 days from to days date by filing and serving the plaintiffs advocates with affidavit disclosing all documents which are and or have been in each of their possession or power.”

7. By 4 June 2007 no discovery had been made on oath. The 3rd and 5th defendant filed a list of documents but this was not enough. They required to depon to an affidavit as required under Order 10 r 11a Civil Procedure Rules. Most advocates I discover are not aware of how to go about this. It merely requires an affidavit from the litigant stating that the annexed list/documents are the documents they would be relying on. The other side would call to have the document to be verified.

8. In this case the 7th defendant and the 6th defendant filed no documents to be relied on.

9. I hereby find that under Order XX 20 Civil Procedure Rules the 3rd and 5th defendants having filed a list of document that the same be accordingly accepted by this court. That verification on oath should now be undertaken.

10 The 7th defendant being the Commissioner of Lands appears not to have filed any papers. If so the rules requiring leave to enter judgment against them requires to be complied with.

11. As to the 6th defendant – no papers has been filed I hereby struck out the defence filed against the 6th defendant under Order X r 20 Civil Procedure Rules for non-compliance of the courts orders. It therefore means that by the striking out of this defence, then the plaintiffs would proceed against the defendant as if no defence had been filed an Interlocutory Judgment under Order IXa r 6 Civil Procedure Rules is hereby entered against the 6th defendant.

12. The court requires to await the trial of the other five defendants be finalized and actually hear the suit in full in order to effect final orders on the 6th defendant. See Order IXA r 6 Civil Procedure Rules.

13. I award the costs of this application to the plaintiff No.1. Applicant to be paid by the 6th defendant. There will be no orders as to costs for 3 and 5th defendant, The 1,2,4 and 7 defendant.

Dated this 27th day of June 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

J. Oduor for J. Oduor & Co. Advocates for the plaintiff No.1 – present

N. Kiangayu & Co. Advocates for the 1st and 2nd defendants – absent

J.N. Pareno for Parano & Co. Advocates for the 3rd parties- present

A . Waithaka Wachira & Co. Advocates for the 4th defendant – absent

Nyaga & Co. Advocates for the 5th defendant – present

Kangatta & Co. Advocates for the 6th defendant – present

Ms Mwaniki for the Attorney General - present