



REPUBLIC OF KENYA



KENYA LAW
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**Ntimama v Mbirika (Environment & Land Case 81 of 2017)
[2022] KEELC 14817 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14817 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 81 OF 2017
CG MBOGO, J
NOVEMBER 17, 2022**

BETWEEN

NAMINTI NTIMAMA PLAINTIFF

AND

STANLEY MBIRIKA DEFENDANT

RULING

1. Before this court for determination is a notice of motion application dated August 22, 2022 expressed to be brought under order 51 rule 1 of the [Civil Procedure Rules](#) and section 3A of the [Civil Procedure Act](#) seeking the following orders: -
 1. That this honourable court be pleased to dismiss the plaintiff's suit for want of compliance with the orders issued by this honourable court *vide* the ruling delivered on March 22, 2022.
 2. That the costs of this application be provided and be borne by the plaintiff.
2. The application is premised on the grounds on the face of it and in the supporting affidavit of the applicant sworn on even date. In the affidavit, the applicant deposed that on July 21, 2020 this suit was set down for hearing and neither the respondent nor his advocate attended court and thus the suit was dismissed for want of prosecution. Further, the respondent filed an application seeking to reinstate the suit and which this court allowed *vide* a ruling delivered on March 22, 2022. The applicant further deposed that five months later, the respondent has neglected, refused and failed to comply with the orders of the court causing severe prejudice to the applicant's right to a fair hearing.
3. The respondent filed a replying affidavit in opposition to the application sworn on September 6, 2022. The respondent deposed that on July 26, 2022 his advocate received a mention notice dated July 21, 2022 and upon perusal of the court file, they realized that ruling had been delivered virtually on March 22, 2022 in the absence of both counsel on record and were, therefore, not served with a ruling notice.



4. The respondent further deposed that his advocate reached out to the applicant's counsel with regard to payment of the throw away costs but the applicant's counsel insisted on filing the instant application. In addition, the respondent did not willfully and intentionally disregard the orders of the court as it was not within his knowledge. As such, he is of the view that this court has discretion to extend time within which to comply with the orders of this court delivered on March 22, 2022.
5. Both parties opted to rely entirely on their respective pleadings. I have analysed and considered the application and the replying affidavit and the issue for determination is whether this court ought to grant the prayers as sought by the applicant.
6. A perusal of the ruling delivered by my brother Kullow J indicate that the court found merit in the notice of motion application filed on October 28, 2020 on condition that the respondent must set down the suit for hearing within 60 days of the ruling. The court further awarded the applicant herein throw away costs of Kshs 20,000/=.
7. It was the applicant's position that since the delivery of the ruling, the respondent has not complied with the court orders issued on March 22, 2022. On the other hand, the respondent averred that he was not aware that a ruling in the matter had been delivered until his advocate received a mention notice. For this court to consider the applicant, he must demonstrate that the respondent was indeed aware of the ruling as early as possible but ignored to comply with the same. From the mention notice dated July 21, 2022 annexed to the respondent's replying affidavit, both parties were served with the mention notice on the same date as can be seen from the acknowledgments. I believe that both parties became aware of the ruling around the same time and therefore, the blame cannot be placed entirely on the respondent.
8. Being mindful of article 159 of the Constitution and the overriding objective of the Civil Procedure Act under section 1A of the Act, read with the duty of the court under section 1B of the Civil Procedure Act, this court is mandated to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. Section 1A (3) places a duty on parties to civil proceedings or their advocates to give effect to the overriding objective of the Civil Procedure Act and to participate in court processes; and most importantly, to comply with the directions and orders of the court. For only then can the court attain the aims bestowed upon it by section 1B of the Act of the just determination of proceedings, the efficient and timely disposal of its business and the efficient use of the available judicial resources. In this case, both parties became aware of the existence of the ruling around the same time and the respondent cannot be said to have failed to take the necessary steps.
9. Arising from the above, I am not inclined to allow the notice of motion application dated August 22, 2022 and the same is dismissed with no orders as to costs. I hereby order both parties to comply with order 11 of the Civil Procedure Rules within 30 days from the date of this ruling. The respondent to pay thrown costs of Kshs 20,000/- within 30 days from the date of this ruling. Matter to be mentioned before the deputy registrar on December 20, 2022 to confirm compliance and to fix a date for hearing. It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL ON THIS 17TH DAY NOVEMBER, 2022.

MBOGO C G

JUDGE

November 17, 2022.

In the presence of: -

CA: Chuma

