



**Doune Farm Ltd v Soi & 4 others (Environment & Land Case
142 of 2019) [2022] KEELC 14689 (KLR) (9 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14689 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 142 OF 2019
FM NJOROGE, J
NOVEMBER 9, 2022**

BETWEEN

DOUNE FARM LTD PLAINTIFF

AND

RICHARD SOI 1ST DEFENDANT

JOSEPH RUNYA CHUMA 2ND DEFENDANT

JACSON MUTAI 3RD DEFENDANT

CHRISYINE LABOSO 4TH DEFENDANT

RICHARD SITIENEI 5TH DEFENDANT

RULING

1. This is an old case filed in the year 2002 and Mr. Ogola has already indicated that his witness is 89 years old. Mr. Arusei seeks an adjournment on the basis that he has obtained new documents which he intends to file and he has a draft application ready.
2. This suit was first placed before me on 4/10/2021, and on that day, in the absence of Mr. Arusei for the interested parties, Mr. Ogola blamed the interested parties for delay in filing their documents and hence delay in the finalization of the suit. On that day this court ordered that the documents of the defendants and the interested parties should be filed and served upon the plaintiff within 7 days and set the matter down for a mention on 19/10/2021 to confirm compliance.
3. On 19/10/2021, Mr. Tanui holding brief for Mr. Arusei appeared for the interested parties and admitted that the interested parties had not filed any documents as ordered. She also averred that the defendants further list and bundle of documents had been served on her firm.



4. Leave was therefore granted to Ms. Tanui to file the appropriate documents of the interested parties with a warning that there would be no further extension of time at the instance of her clients. The matter was then set for a mention on 28/10/2021.
5. On 28/10/2022, Ms. Tanui appeared again and, surprisingly, raised the courage to apply for another extension of time to file her client's documents. As the other parties did not object, this court gratuitously offered her 14 more days to do so and set the matter for hearing of the main suit on 23/2/2022 on which date the court never sat.
6. On 25/2/2022 this matter was mentioned in the presence of Ms. Tanui for the interested parties and a hearing date of 14/6/2022 set down.
7. The court never sat on 14/6/2022 but the matter was mentioned on 15/6/2022 while Ms. Tanui was present, holding brief for Mr. Arusei when the matter was set down for hearing on 9/11/2022 which is today.
8. Mr. Arusei's application for adjournment, coming in the context of such a background, hardly seems flattering for the interested parties.
9. On the two instances the court never sat, the interested parties never took advantage to file their documents as intended. The twist of the knife in the wound is that a suit had been filed, Nakuru ELC No. E25 of 2020, by the interested parties which was dismissed on account of the pendency of the present suit. I would presume that the documents used to lodge Nakuru ELC No. E25/20 are the same documents that the interested parties should have filed herein and, if they were sufficient to prop up counsels' opinion that an entirely independent suit could stand on them, then they would have been as good for the interested parties' defence in this case.
10. The upshot of the foregoing is that I am not persuaded by Mr. Arusei that there are any good reasons given today as to why the interested parties have failed to file their documents in this matter. Secondly considering the age of this matter, and if I am to believe Mr. Ogola's submissions on the age of his witness, the age of all the witnesses for all the parties, and the fact that it has been in the corridors of justice for 20 years since filing in 2002, I am of the view that this is a suit that should be concluded one way or the other whether any party is ready or not. It should not be delayed any longer and that must be viewed to be in the interests of justice.
11. Consequently, I disallow Mr. Arusei's application for adjournment and I order that the hearing do proceed in open court at 11:15am today. All witnesses to attend court then.

DATED, SIGNED AND ISSUED AT NAKURU IN OPEN COURT ON THIS 9TH DAY OF NOVEMBER, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

