



**Wanyande v Oduor (Environment & Land Case 224 of 2017)
[2022] KEELC 15614 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15614 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 224 OF 2017
LN MBUGUA, J
DECEMBER 7, 2022**

BETWEEN

JAMES ODUOR WANYANDE PLAINTIFF

AND

MAURICE OMBIRO ODUOR DEFENDANT

RULING

1. Before me is an application dated August 5, 2022 where the defendant seeks orders that the amended defence and list of documents be deemed as duly filed and that the witnesses be recalled. The applicant contends that the previous advocate on record did not file a defence and list of documents thus in the interest of justice the defendant should be accorded the right to file a defence.
2. The plaintiff has opposed the application via his replying affidavit dated October 4, 2022 where he avers that the applicant is using delaying tactics to defeat justice and he is doing this by changing advocates now and then, adding that the applicant was all along seeking adjournments to file documents but he never filed any.
3. I have considered all the arguments raised herein. On June 14, 2022, this court gave directions for the plaintiff's case to proceed as an undefended claim of which the plaintiff testified and closed their case. The issue falling for determination is whether the defendant should be allowed to defend the suit at this stage of the trial.
4. In considering whether the defendant's application should be allowed, the court has taken into account that "Justice is Justice to both the plaintiff and the defendant; so both parties to the suit should be considered". See *James Yanga Yeswa v Bob Margan Services Limited* [2019] eKLR.
5. I find that the reasons as to why the court directed the case to proceed undefended on June 14, 2022 are well captured in a ruling delivered on that same day. In summary, the gist of that ruling was that the defendant was absent on the day of hearing, that no defence was ever filed despite there being a



counsel on record for defendant and that defence side had been granted a Last Adjournment a year earlier on June 24, 2021.

6. The said ruling of June 14, 2022 has not been challenged by way of an appeal or a review. The applicant is therefore estopped from re-litigating on the same same issues which were raised on June 14, 2022 even if he now has a different advocate.
7. This is certainly a case where the defendant has been given ample opportunity to prosecute his case but he drove himself away from the seat of justice, even failing to attend court on a scheduled date of hearing.
8. It cannot be gainsaid that our judicial system is clogged up with cases because of the failure by litigants and advocates to embrace the overriding objectives set out under section 1A of the Civil Procedure Act, and article 159 (2) (b) as well as article 50 (1) (e) of the Constitution. The defendant squandered his chances to be heard such that five years down the line, he has no defence.
9. In the case of Nginyanga Kavole v Mailu Gideon [2019] eKLR, the court had this to say on the right to be heard:

“What the applicant is entitled to is a reasonable opportunity of being heard on appeal and once that right is availed to him and he does not utilise it, he can no longer complain of being denied an opportunity of being heard”.

10. It is therefore trite law that the responsibility to prosecute a suit, rests on the shoulders of a litigant and not her advocate. This was clearly articulated by Angote J. in Mwangi Gachiengu & 2 others v Mwaura Gitbuku & another—(2019) eKLR in the following words:

“it is trite law that a matter once filed in court does not belong to the advocate but to the litigant. It is the responsibility of the litigant to be in constant touch with his advocate on the position of the matter”.

11. The circumstances of this case do not warrant this court to exercise its discretion in favour of the applicant. Thus the application dated August 5, 2022 is hereby dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Masinde for Plaintiff/Respondent

Ochanda for Defendant/Applicant

Court Assistant: Eddel/Vanilla

