



REPUBLIC OF KENYA



**Toncap Investment v LN Property Development Co Limited (Environment and Land Appeal E004 of 2023) [2024] KEELC 5041 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5041 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT AND LAND APPEAL E004 OF 2023  
GMA ONGONDO, J  
JULY 3, 2024**

**BETWEEN**

**TONCAP INVESTMENT ..... APPELLANT**

**AND**

**LN PROPERTY DEVELOPMENT CO LIMITED ..... RESPONDENT**

*(An appeal from the judgment of the Honourable Tribunal in Nairobi Business Tribunal Case No 26 of 2016 (Kisii) as was delivered vide ruling made on the 2nd December 2019.)*

**RULING**

1. The appellant, Toncap Investment through Aluoch Odera and Nyauke Advocates, originated the present appeal by way of an amended memorandum of appeal dated 20th November 2023 based on two grounds namely;
  - a. The Honourable Business Premises erred in proceedings to tax the Landlords Bill *Ex-parte* when there was no justifiable grounds to do so.
  - b. The bill in question is excessive and not justifiable at all.
2. Wherefore, the appellant prayed for:
  - a. Order allowing this Appeal and quashing the *Ex-parte* order allowing the Landlords' Bill of Costs and thereafter re-submit the Bill for assessment by the Tribunal.
  - b. Costs of this Appeal and interest thereon until payment in full



3. Mr. H. Kabiru learned counsel for the respondent has informed the court that;

“We served the appellants counsel vide affidavit of service sworn on 23<sup>rd</sup> May 2024. No record filed and served upon us. Therefore, I pray that this appeal be struck out for non-compliance with orders of 8<sup>th</sup> February 2024 and 20th May 2024 with costs to the respondent.”

4. By the court orders given on 8th February 2024, the appellant’s counsel was to file and serve record of appeal herein. The court extended the orders on 20th May 2024. However, there is non-compliance with the said orders.

5. The appellant’s counsel was duly served as revealed in affidavit of service sworn on 23rd May 2024 by Peter Muendo Keli, an authorised process server hence, made aware of the existence of the appeal and orders herein; see *Ogada v Mollin* [2009] eKLR.

6. So, the appellant has been accorded a fair opportunity in this appeal as provided for under Articles 48 and 50 (1) of the *Constitution* of Kenya, 2010; see also *James Kanyiita Nderitu and Another v Marios Philotas Gbikas and another* [2016] eKLR.

7. Article 159 (2) (b) of the *Constitution* of Kenya 2010 and sections 3 and 19 of the *Environment and Land Court* 2015 [2011] stipulate that justice shall not be delayed.

8. The upshot is that the application by learned counsel for the respondent is merited and this appeal is hereby struck out with costs to the respondent.

9. It is so ordered.

**DATED AND DELIVERED AT HOMA BAY THIS 3RD DAY OF JULY 2024**

**G M A ONGONDO**

**JUDGE**

Present;

1. H. Kabiru learned counsel for the respondent

2. T. Luanga, court assistant

