



Patel & another v United Engineering Supplies Limited; Patel (Interested Party) (Environment & Land Case E090 of 2023) [2024] KEELC 6650 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6650 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E090 OF 2023**

**MD MWANGI, J
OCTOBER 11, 2024**

BETWEEN

DINKAR RAMBAHI PATEL 1ST PLAINTIFF

MALINI D PATEL 2ND PLAINTIFF

AND

UNITED ENGINEERING SUPPLIES LIMITED DEFENDANT

AND

PREMILA PATEL INTERESTED PARTY

(In respect of the Notice of Motion dated 9th May, 2024 brought under the provisions of Sections 1A, 3A and 63 (e) of the Civil Procedure Act, Order 1 Rule 1 of the Civil Procedure Rules, Section 19 of the ELC Act, and Article 159 of the Constitution)

RULING

Background

1. The application before me is by the Plaintiffs who pray for extension of time within which to file a replying affidavit and written submissions in opposition to the Defendant’s application dated 8th march, 2023. The said Defendant’s application seeks to strike out the Plaintiff’s suit on the basis that it amounts to an abuse of the process of Court.
2. The Plaintiffs explain that they were unable to comply with the timelines issued by the Court in filing their replying affidavit and consequently the submissions. They explain that though their Advocate prepared a draft replying affidavit in good time, the same was shared with the Plaintiff’s personal legal adviser who took time before returning the draft for purposes of filing in Court. By the time the matter was being mentioned to confirm compliance, the Plaintiffs were yet to comply. The Court proceeded



to set down the Defendant's application for ruling on 23rd July, 2024, having noted that the Plaintiffs had not complied with its directions.

3. The Plaintiffs plead that their claim against the Defendant is substantial involving a sum of Kshs. 51,600,000/- in unpaid rent amongst other prayers. They assert that they stand to be prejudiced if not given an opportunity to respond to the Defendant's application, as they may be condemned unheard. It is therefore their assertion that it will be in the interest of justice that they be allowed an opportunity to respond to the Defendant's application.
4. The Plaintiff's application is supported by the affidavit of Dinkar Rambai Patel sworn on 9th May, 2024. In the affidavit, the deponent reiterates the grounds on the face of the application. He attaches the draft replying affidavit prepared on behalf of the Plaintiffs and sent to the Plaintiffs' legal adviser who made comments on it as elaborated at paragraph 8 of the said supporting affidavit.
5. The Plaintiffs' application was opposed by the Defendant through its replying affidavit sworn by the Sanjay Ramesh Patel on 14th June, 2024. The deponent asserts that the Plaintiffs have not given a reasonable explanation for their failure to comply with the directions of the Court. The reasons advanced in the Plaintiffs' application are not valid. He further points out that the Plaintiffs' Advocate even failed to turn up in Court on 29th April, 2024 when the matter was mentioned to confirm compliance with the Court's directions in order to explain their failure to comply.
6. The Defendant avers that the Plaintiffs' casual approach to the matter is calculated to impede the timely disposal of this case. It is a delaying tactic. He points out to an email communication from the Plaintiffs' Advocates to the alleged legal adviser which was sent almost a month after the Court's directions to demonstrate that the Plaintiffs' Advocates did not treat the matter with the seriousness it deserved.
7. The Defendant prays for the dismissal of the Plaintiffs' application.

Court's Directions

8. The Court's directions were that the Plaintiffs' application be heard orally. It was heard as such on 20th June, 2024. The proceedings of the day form part of the record of this Court. I need not replicate them here.

Issues for Determination.

9. Having considered the Plaintiffs' application, the response by the Defendant and the oral submissions by both sides, the sole issue for determination is whether the Plaintiffs have offered a reasonable explanation to enable the Court exercise its discretion to extend time in their favour.

Analysis and Determination

10. Undoubtedly, this Court has the discretion to enlarge time as sought by the Plaintiffs. Order 50 rule 6 of the Civil Procedure Rules explicitly provides that: -

“.....the Court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.”

11. The Supreme Court of Kenya in the case of Nicholas Kiptoo Arap Korir Salat – vs – IEBC & 7 others (2014) eKLR, laid down the principles that govern the exercise of the discretion to extend time as follows: -



1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;
 2. A party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
 3. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
 4. Where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the Respondents, if extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time”
12. I have considered the Plaintiffs’ application against the above principles particularly on whether a reasonable explanation has been offered for the delay to the satisfaction of the Court and whether there is any prejudice to be suffered by the Respondent if the extension is granted.
 13. The Plaintiffs’ Advocates have cited delay from the Plaintiffs’ personal legal adviser as the cause of their non-compliance with the directions by the Court. The Plaintiffs’ further submitted that any prejudice to the Defendant can be compensated by an award of costs.
 14. The Defendant in opposition as pointed out earlier avers that the Plaintiffs have not offered a reasonable extension for the non-compliance with Court’s directions. In its submissions, the Defendant submitted that it stands to suffer delay in the determination of its case, a violation of its right to have the dispute determined expeditiously.
 15. Considering the circumstances of this case, the Court finds it fit and just in the interest of substantive justice to allow the Plaintiffs’ application. The explanation by the Plaintiffs is sensible. In any event no delay will be occasioned in this matter since the Plaintiffs have already prepared their intended replying affidavit and the submissions they intend to file. The Court in allowing the application will set the timelines within which the same will be filed and served.
 16. Order 50 rule 6 of the Civil Procedure Rules provides that the costs of any application to extend time and any order thereon shall be borne by the party(s) making such application, unless the Court otherwise orders. In this case, the Court orders that the costs of this application be borne by the Plaintiffs/Applicants.
 17. Accordingly, the Plaintiffs’ application dated May 9, 2024 is hereby allowed with costs to the Defendant to be assessed in the usual way.
 18. The Plaintiffs shall file and serve the attached replying affidavit and submissions in the next 24 hours. The date of the ruling on the Defendant’s application remains as earlier scheduled.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF JULY 2024.

M.D. MWANGI



JUDGE

In the virtual presence of:

Ms. Kadima for the Plaintiff/Applicant

Mr. Thuo for the Defendant/Respondent

Yvette: Court Assistant

M.D. MWANGI

JUDGE

