



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Githere & another & another v Ruhangi & 6 others (Environment & Land
Case 748 of 2013) [2023] KEELC 602 (KLR) (7 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 602 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 748 OF 2013
LN MBUGUA, J
FEBRUARY 7, 2023**

BETWEEN

**CATHERINE KIBUI MBURE GITHERE AND JAMES GITHERE MBURU
(AS ADMINISTRATORS OF THE ESTATE OF DAVID MBURU GITHERE -
DECEASED) 1ST PLAINTIFF
GEORGE JONATHAN MAARA 2ND PLAINTIFF**

AND

**JOHN PETER KAMAU RUHANGI 1ST DEFENDANT
GUMCHEM KENYA LIMITED 2ND DEFENDANT
PARAMOUNT UNIVERSAL BANK LIMITED 3RD DEFENDANT
ELIZABETH MUIGAI T/A INTEGRA AUCTIONEERING COMPANY 4TH
DEFENDANT
NAIROBI CITY COUNTY 5TH DEFENDANT
WANDERJOY PARTY WORLD LIMITED 6TH DEFENDANT
ISAAC MAINA WANDERE 7TH DEFENDANT**

RULING

1. This matter is scheduled for hearing today, but three issues have arisen for determination. The first is whether the plaintiffs in ELC 870/2016 should be allowed to introduce a document at this stage; secondly whether the suit filed by the plaintiffs in ELC 748/2013 should be dismissed and if this is in the affirmative, then which suit should form the lead suit.
2. In determining the issues for determination, this court has taken into consideration that pretrial directions have been conducted in this file countless times, at least 11 times.



3. The court (Judge sitting) gave directions on September 20, 2018 for parties to file their documents within 45 days, on June 11, 2019, they were given 60 days, on November 18, 2020, again 45 days and on March 10, 2021, 45 days.
4. The matter was also mentioned before the Deputy Registrar, again for pretrial directions on May 7, 2020, July 23, 2020 and July 29, 2021.
5. I handled this file for the very first time on October 19, 2021 of which I gave directions for pretrial directions to be conducted on February 8, 2022. On that day of February 8, 2022 the issue of service was not clear and I gave another date of May 31, 2022. This time round, the pretrial directions were to be conducted in open court, where the court gave strict but reasonable timelines for parties to file and serve all their documents within 90 days; that is by August 31, 2022.
6. The court gave further direction as follows: Documents filed outside the given timelines shall stand as expunged and that the court would only consider pleadings, witness statements and documentary evidence which were availed in the paginated Trial Bundles. The court not only gave a further date of pretrial directions on December 7, 2022 but also scheduled the matter for hearing for two days (6th and February 7, 2023).
7. From the foregoing analysis, it is crystal clear that the directions of May 31, 2022 contained self executing orders where the parties were put on notice that no further documents were to be availed outside the given timelines. This is not a situation whereby the parties (read plaintiffs in 748/15 and 870/2016) have been denied a chance to present their case. It is simply a case of indolence and squandering their chances to present their case.
8. The provisions of Section 1A of the [Civil Procedure Act](#) sets out the objectives of the said statute in the following words:
 - “(1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
 - (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
 - (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.... Emphasize added”
9. It is therefore pertinent for parties to comply with directions given by the court and to adhere to the set timelines. In the case of [Isiolo Stage View Enterprises v Isiolo County Government & 2 others](#) [2018] eKLR, I stated as follows in relation to time standards:

“Time standards help courts to closely manage and monitor the processing of cases from filing to conclusion. Further, time standards set defined targets for the completion of key process steps and events, establish overall goals that judges and lawyers must meet, create the expectation of what constitutes timelines, and are essential to eliminating and avoiding case backlogs. The standards reflect a commitment by the courts to complete cases promptly, and also reflect what court users’ regard as a reasonable time for the resolution of cases. The net



effect of non-compliance with the set timelines is delay, creation of backlog, more acrimony and even confusion.”

Also see *Alexander Khamisi Mulimi v Independent Electoral and Boundaries Commission & 2 others* [2018] eKLR.

10. In the case of *Dande & 3 others v Director of Public Prosecution & 2 others* (petition 4 (E005) of 2022) [2022] KESC 23 (KLR) (19 May 20220) (Ruling) the Supreme Court of Kenya stated that the practice of filing documents at 11th hour is irregular and unacceptable.
11. It is not lost to this court that this case is about 10 years old. Coupled with the endless pretrial directions given in the files, I find that no party should be allowed to file documents at this stage.
12. In that regard the application made by plaintiffs in ELC No 870/2016 to introduce a certain document is rejected.
13. It is noted that the plaintiffs in ELC No 748/13 have not availed any of their documents. They cannot even point out where their pleadings are. Further, the court took time to call out all the parties in the various files and it turned out that the plaintiffs in ELC 748/13 were absent. No plausible or any reason was advanced as to why the said plaintiffs were not in court yet the matter was scheduled for hearing yesterday and today. The issue being advanced by counsel M/s Wandugi that there was confusion on issue of representation is neither here or there. After all today’s date was taken nine months ago on 31.5.202 hence there was sufficient time to sort out any issues relating to representation.
14. Since the plaintiffs in ELC No 748/2013 are absent, their suit is hereby dismissed for want of prosecution with costs to the defendants there in.
15. On the question as to which file should be the lead suit, I note that the files are consolidated and proceedings are being recorded in ELC 748/13; I also understand that there are Counter Claims in the said file. In that regard, the file ELC 748/13 shall still continue to be the lead file.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Wandugi holding brief for Mr. Wandugi and Manegene for both plaintiffs

Mwenda Njagi for Plaintiff in ELC No. 870 of 2016

Njengo for 1st & 2nd Defendants

Mr. Mbaabu for 3rd and 4th defendants

Mrs. Shikwe holding brief for Mr. Nyauchi for 5th defendant

Kirimi for 6th and 7th defendants

Court assistant: Eddel

