



Thindigua Company Limited v Njunge & 2 others; Kung’u & another (Interested Parties) (Civil Case 2163 of 2001) [2023] KEELC 699 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 699 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL CASE 2163 OF 2001
LN MBUGUA, J
FEBRUARY 9, 2023**

BETWEEN

THINDIGUA COMPANY LIMITED PLAINTIFF

AND

FRANCIS GITAU NJUNGE 1ST DEFENDANT

JOSEPH KIMANI 2ND DEFENDANT

NDAGWATHA KIARIE 3RD DEFENDANT

AND

STEPHEN KARANJA KUNG’U INTERESTED PARTY

BERNARD KINYAJUI PETER INTERESTED PARTY

RULING

1. This matter was refereed for mediation on February 23, 2022 of which a mediation agreement was arrived at dated October 12, 2022. There after, the interested parties filed an application dated October 28, 2022 seeking orders to stay the adoption of the mediation agreement so that the 1st defendant can give an undertaking that immediately upon the adoption of the mediation agreement, the 1st defendant shall transmit the documents pertaining to parcel 638 to the 4th defendant. That application of October 28, 2022 was slated for hearing on January 16, 2023.
2. On that day of January 16, 2023, counsel for the Interested Parties indicated that they needed to file a Supplementary Affidavit so as to bring to the court’s attention their Statement of Claim. That the said Statement of Claim and other documents were filed electronically on January 20, 2021 but the same are not in the portal. It is further argued that the said documents were filed pursuant to Judge Eboso’s orders given in this file in year 2021.



3. Counsel for the Interested Parties brought this issue up following responses filed by the Plaintiff and the 1st Defendant to the Interested Party's application dated October 28, 2022 where they contended that the Interested Parties have no direct claim against the 1st Defendant thus they had no locus to be joined in the mediation proceedings being cause MLM/MED/O94/2022.
4. In response, counsel for the Plaintiff stated that the documents referred to by counsel for the Interested Party are not in the portal and that the Interested Parties have never filed a trial bundle despite having been on record since 2001. He also contended that the Interested Parties should first set aside the mediation agreement entered in cause MLM/MED/O94/2022 instead of introducing a claim in clause 4 of their statement of claim dated January 11, 2021.
5. Similarly, counsel for the 1st Defendant stated that the Interested Parties have never filed any documents.
6. I have perused the record. In the ruling dated May 22, 2014, the Court granted orders as follows;

“It is essential for the 4th and 5th defendants (now interested parties) to file a statement of how their interest in the suit property arises together with any supporting documents. Thus just like the other parties to the suit have to file their witness statements, the interested parties should also file their statements and any supporting documents to enable the court and the other parties to know the nature of their interest.”
7. The period of compliance was stipulated in the said ruling in the following words;

“The Court in view of the unsettled nature of the pleadings cannot give any final specific directions and invites all the parties to within 45 days from the date of this ruling to review their pleadings with a view to making full compliance with Order 11 of the civil Procedure Rules”.
8. The trial commenced of which plaintiff's evidence was taken on May 15, 2017, and eventually closed on December 18, 2018. All this time, the Interested Parties had not complied with the pretrial directions given on May 22, 2014. Further, they did not seek variations of the said directions. Nowhere during the period of year 2021, did the court grant the Interested Parties leave to file their pleadings and documents.
9. It is also noted that the documents allegedly filed electronically are not in the portal and neither were they served upon the parties.
10. Finally, I find that by the time the matter was referred for mediation, the Interested Parties had not brought to the attention of the other parties and the court that they had a formal statement of claim. They simply took the position that mediation was agreeable to them.
11. What resonates from the foregoing analysis is that the claim of the Interested Parties has been unknown all along. This is a case of year 2001, and the Interested Parties cannot purport to file their pleadings and documents as and when they so desire. To this end, I make reference to the case of *Dande & 3 others v Director of Public Prosecutions & 2 others* (Petition 4 (E005) of 2022) [2022] KESC 23 (KLR) (19 May 2022) (Ruling) where the Supreme Court of Kenya stated that the practice of filing documents at the 11th hour is irregular and unacceptable. In the circumstances, I disallow the prayer for the Interested Parties to file a further affidavit to introduce their documents including the statement of their claim.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS.



LUCY N MBUGUA

JUDGE

In the presence of:-

**Nguru for 1st Defendant
for the Interested Parties.**

Court assistant: Eddel

