



Achieng & 5 others v Attorney General (Environment & Land Case 2028 of 2007) [2023] KEELC 16039 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16039 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 2028 OF 2007**

**LN MBUGUA, J
MARCH 9, 2023**

BETWEEN

**BENTA KALARA ACHIENG 1ST PLAINTIFF
EVERLYNE ATIENO OCHIENG 2ND PLAINTIFF
CECILIA WANJIRU GICHURU 3RD PLAINTIFF
MARY NDUNGE MUTUKU 4TH PLAINTIFF
WILSON MUTUMBA WOMEN GROUP (DULY REGISTERED AS A SELF-HELP
GROUP WITH MEMBERSHIP OF 2,907) WOMEN 5TH PLAINTIFF
ISAAC MBURU NJUGUNA (SUING ON HIS BEHALF AND ON
BEHALF OF OVER 700 MEMBERS OF WILSON MUTUMBA WOMEN
GROUP) 6TH PLAINTIFF**

AND

THE ATTORNEY GENERAL DEFENDANT

RULING

1. This matter is for scheduled for hearing of the Plaintiff's case on 6th and June 7, 2023. On October 25, 2022 the Court gave strict directions on preparation for the trial whereby the parties were to file and serve their own Trial bundle containing their pleadings, witness statements and documentary evidence within 60 days. There was a rider that documents filed outside the given timelines would stand as expunged. The matter was also given a date for pretrial directions on February 6, 2023.
2. On February 6, 2022; the date set aside for pretrial directions, Counsel for the 1st plaintiff and the Attorney General urged the court to expunge the 6th plaintiff's trial bundle as it was filed on February 2, 2023, outside the timelines provided by the court. They also accused the 6th plaintiff of amending the plaint herein without following due procedures.



3. In response, counsel for the 6th plaintiff admitted that they had not complied with court's directions given previously, ostensibly because there were deliberations relating to filing one bundle for all the plaintiffs. That while the deliberations were ongoing, Mr. Ogada of the firm on record for the 6th plaintiff was taken ill and he travelled to the United Kingdom. On the issue of the 6th defendant amending the plaint without following due procedure, he submitted that the plaint was amended 3 years ago.
4. Counsel Mwangi, appearing for the 2nd and 3rd plaintiffs informed the court that the 2nd plaintiff had passed on, but they had no further particulars including when the death occurred. They sought time to file their documents for the 3rd defendant.
5. I have considered all the issues raised herein. On the issue of filing and service of documents, I find that the orders given on October 25, 2022 were self executing, such that the parties were put on notice; that in the event of none compliance, their documents would stand as expunged. It is noted that this case was filed in the year 2006!. Before the date of October 25, 2022 when the court gave directions on the filing and service of trial bundles within 60 days, the court had given similar directions on May 9, 2022. Thus parties had sufficient time to prepare for the trial.
6. In the case of *Isiolo Stage View Enterprises v Isiolo County Government & 2 others* [2018] eKLR, I stated as follows on the issue of compliance;

“The court also has a constitutional mandate to ensure that cases are heard expeditiously. Article 159 (2) (b) of the Constitution states that “justice shall not be delayed.” 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 timeliness, 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 case. The net effect of non-compliance with the set timelines is delay, creation of backlog, more acrimony and even confusion.”
7. This is a situation whereby the court even went to the extent of ensuring that advocates had exchanged their contacts on October 25, 2022, so as to have “harmonious modus operandi” in terms of compliance. In light of the foregoing analysis, I decline to vary the orders given on October 25, 2022, such that the documents filed by the 6th plaintiff hereby stand as expunged. Similarly, the court declines to allow any party, including the 3rd plaintiff to file any further documents or witness statements.
8. On the issue of the amended plaint dated March 10, 2020 of the 6th plaintiff, the court records of February 5, 2020 indicate that parties consented to the joinder of the 6th plaintiff of which the plaint was to be amended within 14 days. This order was similarly not complied with by this particular party; (6th plaintiff). In the circumstances, the said Amended plaint is hereby expunged from the records.
9. On the issue of substitution of the 2nd Plaintiff, the record shows that on January 20, 2020, the court was informed that the 2nd Plaintiff passed on. The case of the said plaintiff was marked as abated. I will say no more about that issue save to clarify that the status of that particular plaintiff remains the same to date.
10. In the final analysis, the court gives directions for the case to proceed as earlier scheduled. Only the documents which are properly in the courts record shall be relied on by the parties.



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

LUCY N. MBUGUA

JUDGE

In the presence of:-

Magotsi holding brief for Kilonzo for Plaintiff

Bosire and M/s Mwangi for 2nd, 3rd and 5th Plaintiffs

M/s Njeru holding brief for Mr. Oganda for 5th Plaintiff

Byakumma for 5th Plaintiff

Court assistant: Vanilla

