



**Lasoi (Suing as the Administrator of the Estate of the Late Solomon Kipkorir Arap Lasoi) & another v Cheruiyot & 7 others (Environment and Land Case Civil Suit 472 of 2016) [2023] KEELC 16006 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16006 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE CIVIL SUIT 472 OF 2016  
FM NJOROGE, J  
MARCH 9, 2023**

**BETWEEN**

**DIANA LEE LASOI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE SOLOMON KIPKORIR ARAP LASOI) ..... 1<sup>ST</sup> PLAINTIFF  
LEAH CHERONO SHABANGI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOHN KIPTOO CHERUIYOT ..... 1<sup>ST</sup> DEFENDANT  
PETER K. CHERUIYOT ..... 2<sup>ND</sup> DEFENDANT  
COLLINS K. CHEPKWONY ..... 3<sup>RD</sup> DEFENDANT  
JANE CHEPKORIR BARBARET ..... 4<sup>TH</sup> DEFENDANT  
CAREN CHEPKIRUI MUTAI ..... 5<sup>TH</sup> DEFENDANT  
CAROLINE CHEBET ..... 6<sup>TH</sup> DEFENDANT  
SAMWEL KIPNGETICH KITUR BETT ..... 7<sup>TH</sup> DEFENDANT  
THE COUNTY LANDS REGISTRAR NAKURU COUNTY .... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the 2<sup>nd</sup> to 7<sup>th</sup> defendants notice of motion application dated 1/12/2022 brought under section 1A (i)(ii)(iii), 1B (i)(a)(d), 3 A and 95 of the *Civil Procedure Act*, order 50 rule 6 of the *Civil Procedure Rules* and article 159(2)(d) of *the Constitution* of Kenya which sought the following orders:



- a. That this honorable court be pleased to enlarge time within which the Applicants should file and serve their Statements of Witnesses, List of Witnesses, List and copies of documents.
  - b. That upon grant of the above prayer, this honorable court be pleased to admit the Applicant's Statement of Witnesses, List of Witnesses, List and copies of Documents (with copies of documents attached thereto) dated and filed in court on November 8, 2022 whose copies have already been served upon counsel for the plaintiffs and counsel for the 8<sup>th</sup> defendant as properly filed and served.
  - c. That this honorable court be pleased to give such other or further directions as it may deem appropriate having regard to the fact that it would be convenient, just and procedurally correct to give directions on the filing of the statements of defence by the applicants herein and the defence by the defendants in Nakuru CMC ELC No. 106 of 2018 (now consolidated with this matter).
  - d. That costs of this application be costs in the cause.
2. The application was supported by the affidavit sworn by Caroline Chebet the 6<sup>th</sup> defendant on 01/12/2022. She deposed that this matter was consolidated with Nakuru CMC ELC No. 106 of 2018 which suit is between herself and Diana L. Lasoi, Leah Cheron Shabangi & Leonard Kipngetich Chelule; that the present matter was to be the lead file; that at the time the lower court file was forwarded to this court, no defence had been filed; that the court inadvertently failed to give directions as to how the two matters would be dealt with given that the defendants herein had also not filed their statement of defence; that at the moment the present matter is undefended while Nakuru CMC ELC No. 106 of 2018 is equally undefended; that no party will be prejudiced if they are allowed to file their respective documents; that after the parties agreed to re-open the case by consent, the 2<sup>nd</sup> to 7<sup>th</sup> defendants filed their list of witnesses, witness statements and list of documents; that it is only fair that the prayers sought be granted so that all the documents filed be deemed as procedurally filed and that the plaintiffs in this case can also be allowed to file their statements of defence and compliance documents in respect of Nakuru CMC ELC No. 106 of 2018.
3. In response to the application, the plaintiffs filed a replying affidavit sworn by Leonard Kipngetich Chelule their counsel. He deposed that the present suit was instituted against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants vide the plaint dated 3/11/2016; that summons were served upon the defendants and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants entered appearance but did not file any statements of defence; that they only filed a response to the application for injunction; that a temporary injunction was issued and later confirmed on 19/06/2018; that the 6<sup>th</sup> defendant had filed a plaint in the lower court about a month earlier on 24/05/2018 in order to circumvent the said orders of court; that she also filed an application for injunction in that suit which is Nakuru CMC ELC No. 106 of 2018; that this prompted the plaintiffs to file an amended plaint on 08/06/2018 to include the 4<sup>th</sup> to 8<sup>th</sup> defendants; that in the said amended plaint it gave a comprehensive reply to the 6<sup>th</sup> defendant's plaint that had been filed in the lower court; that the summons to enter appearance and the amended plaint were served upon the newly joined defendants who filed a memorandum of appearance but failed to file any other documents except for the 8<sup>th</sup> defendant; that the 1<sup>st</sup> to 7<sup>th</sup> defendants had ample time to file their documents and that they have not explained the reason for the delay; that the court gave an order for compliance with Order 11 of the Civil Procedure Rules on 17/12/2020 and gave a hearing date of 28/10/2021 for the suit; that on 28/10/2021 when the suit came up for hearing, the defendants objected to the hearing of the case on the grounds that the plaintiffs had served their list of documents late; that they were given 30 days to file their documents in response; that when the matter came up for hearing, the plaintiffs adduced their evidence; that on the following hearing date, the defendant's advocate indicated that they were not



ready to proceed as he lacked instructions from the defendants; that the defendants through their new advocates filed an application seeking to be allowed to file their defence out of time which application was struck out; that the present application is therefore res judicata; that the suit was eventually heard and the plaintiff's case was marked closed; that the plaintiffs begrudgingly agreed to reopen the case while knowing that the only pleadings were those of the 6<sup>th</sup> defendant through her plaint; that the documents the 2<sup>nd</sup> to 7<sup>th</sup> defendants seek to be admitted are a ploy they want to use to sneak in a defence into these proceedings; that the said documents do not correspond to their pleadings already filed and that they seek to circumvent the court orders of 28/04/2022 barring them from filing a defence; that the case had already been heard and concluded and was awaiting judgement and that the defendants do not deserve the orders sought.

4. Neither of the parties filed their submissions to the application.

### **Analysis and determination**

5. After considering the application and the replying affidavit, the only issue that arises for determination is whether the court should admit the 2<sup>nd</sup> to 7<sup>th</sup> defendants list of documents, list of witnesses and witness statements.
6. The 2<sup>nd</sup> to 7<sup>th</sup> defendants are seeking that the court admits their list of documents, list of witnesses and witness statements that were dated and filed on 8/11/2022. The 2<sup>nd</sup> to 7<sup>th</sup> defendants argue that the present suit is at its infancy and that no party will be prejudiced if the court gives directions that all the parties file their compliance documents and the case be heard afresh.
7. The plaintiffs on the other hand argue that the 2<sup>nd</sup> to 7<sup>th</sup> defendants had ample time to file their response to the plaintiffs' case as the present application was filed six years after the 1<sup>st</sup> to 3<sup>rd</sup> defendants had been served with summons to enter appearance and four years since the plaint was amended and the 4<sup>th</sup> to 7<sup>th</sup> defendants added to the suit. The plaintiffs further argue that the 2<sup>nd</sup> to 7<sup>th</sup> defendants have not given an explanation for their failure to file their documents after they entered appearance.
8. A perusal of the court record indicates that the matter was mentioned on 17/12/2020 when counsel for the 2<sup>nd</sup> to 7<sup>th</sup> defendants sought for thirty days to fully comply with Order 11 which were granted by the court and a hearing date given for 24/03/2021. When the matter came up for hearing on 24/03/2021, counsel for the 2<sup>nd</sup> to 7<sup>th</sup> defendants was not ready to proceed and he sought time to seek instructions on the bundle of documents file by the plaintiffs. He was granted the said adjournment and the matter set down for hearing on 28/10/2021.
9. On 28/10/2021, counsel for the 2<sup>nd</sup> to 7<sup>th</sup> defendants informed the court that he was ready to proceed. One witness testified in support of the plaintiffs' case. The matter was mentioned severally before it came up for further hearing of the plaintiffs' case on 28/04/2022. On the said date, the Land Registrar testified and the plaintiff's case was closed. The 8<sup>th</sup> defendants case was also closed. The 2<sup>nd</sup> to 7<sup>th</sup> defendants had earlier filed the application dated 25/04/2022 seeking for leave to file a statement of defence which application was struck out and the court stated as follows;

“ ...

- (3) the defendants have not filed any defence that they can prosecute in this matter. Consequently, the 1<sup>st</sup> to 7<sup>th</sup> defendants respective evidence cannot be heard as no evidence can be called in the circumstances without breaking the law. I therefore strike out the Notice of Appointment dated 25/04/2022 and the Notice of Motion dated 25/04/2022 and I deem the defence cases closed. The



plaintiff shall file and serve submissions within 21 days. The defendants shall, if they deem it fit, file and serve their submissions within 21 days of service of the plaintiff's submissions. The matter shall be mentioned on 15/06/2022 for issuance of a judgement date”

10. Thereafter the 2<sup>nd</sup> to 7<sup>th</sup> defendants filed another application dated 11/05/2022 which sought that the orders of 28/04/2022 be set aside for the re-hearing of the evidence of the District Land Registrar-Nakuru and their defence. By consent the said application was allowed and the defendant given a date for defence hearing before which date they filed the list of documents that they are seeking to be deemed as properly filed.
11. It should be noted that on 17/12/2020 the 2<sup>nd</sup> to 7<sup>th</sup> defendants were given sufficient time to file their list of documents, list of witnesses and witness statements and yet they filed the said documents on 8/11/2022 without giving an adequate explanation as to the delay. Even in the application under consideration, the 2<sup>nd</sup> to 7<sup>th</sup> defendants have not given a reason for the delay and have only stated that the plaintiffs will not be prejudiced if their list of documents, list of witnesses and witness statements are deemed to be properly filed.
12. It is my view that the 2<sup>nd</sup> to 7<sup>th</sup> defendants have had more than enough time to file their documents and the inordinate delay in filing the same is inexcusable and prejudicial to the plaintiffs. However, this court would have been of a contrary conclusion had there been no consent entered into by the parties on 20/6/2022 allowing the application dated 11/5/2022.
13. In allowing that application the plaintiff must have been aware that it will open the path for the defendants to prosecute their defence and no defence can be effectively prosecuted in this specific cases without reliance on the documents that the applicants now seek to have admitted into the court record. Though the court had barred the applicants earlier from participation on the basis that no defence or documents had been filed, the consent of the parties entered into on 20/6/2022 has given the applicants a second chance.
14. Consequently, I find that the application dated 1/12/2022 has merit and the same is allowed in terms of prayers no (a), (b) and (c) thereof. The documents of the defendants now on record are deemed as properly filed and served. The applicants shall however bear the costs of the instant application to the plaintiff which in consideration of the very disruptive role of the applicants in this matter I now assess in the sum of Kshs 50,000/= (Fifty Thousand) only within 14 days of this order in default of which the orders issued herein will lapse and the matter will go for the preparation of judgment on the basis of the evidence on record.
15. For any further orders on the issue of filing defence, the applicants will have to await the directions of this court on a mention, bearing in mind that there is a suit which had been filed to counter the plaintiff's position and a circumspect orders have to be issued after hearing the parties in regard thereto. The matter will be mentioned virtually on 22/3/2023 for further directions.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 9<sup>TH</sup> DAY OF MARCH 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

