



**Warirah v Deputy County Commissioner, Kasarani Sub County, Nairobi County  
& 3 others; National Land Commission (Interested Party) (Environment &  
Land Case 119 of 2020) [2023] KEELC 16040 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16040 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 119 OF 2020  
LN MBUGUA, J  
MARCH 9, 2023**

**BETWEEN**

**REUBEN MAGONDU WARIRAH ..... PLAINTIFF**

**AND**

**THE DEPUTY COUNTY COMMISSIONER, KASARANI SUB COUNTY,  
NAIROBI COUNTY ..... 1<sup>ST</sup> DEFENDANT**

**THE CABINET SECRETARY, MINISTRY OF INTERIOR & COORDINATION  
OF NATIONAL GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND  
BOARD ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**RULING**

1. On July 21, 2022, this court on its own motion directed that the National Land Commission (NLC) be jointed in these proceedings as interested party. To this end, the plaint was to be amended accordingly and served upon all the parties and the matter was given the date of December 13, 2022 for pretrial directions.
2. On December 19, 2022 plaintiffs counsel informed the court that they had served all parties including the National Land Commission with their amended plaint and a trial bundle both dated August 24, 2022, but only the attorney general had filed a defence. The court was urged to give a judgment in default of appearance.



3. Counsel appearing for the attorney general (1<sup>st</sup> – 3<sup>rd</sup> defendants) agreed that they had a defence but they sought leave to file a defence to the amended plaint and documents. The 4<sup>th</sup> defendant averred that they were not served with any witness statements.
4. The court proceeded to give the following directions:
  - a. pretrial directions in open court on February 22, 2023.
  - b. Hearing on July 13, 2023.
  - c. The defendants are granted leave to file and serve their defences by January 10, 2023.
  - d. All parties to file and serve their paginated trial bundles by February 6, 2023.
  - e. The plaintiff to serve today's directions upon National Land Commission within 10 days.”
5. On February 22, 2023, it turned out that the attorney general had filed their amended defence but had only served the same to the plaintiff the previous day. They had not filed any witness statements or documentary evidence.
6. The 4<sup>th</sup> defendant stated that they were served with the amended plaint, that they filed their amended statement of defence dated December 29, 2022 but the same was not captured as the payments never went through. They urged the court to be allowed to make the payments. They further stated that they had not filed any trial bundle, attributing this to the fact that national land commission had filed nothing, while the attorney general only filed a defence. They seek 45 days to file their documents.
7. The issue for determination is whether the pleadings of the attorney general filed outside the given timelines should be regularized; whether the 4<sup>th</sup> defendant should be allowed to file/serve their pleadings and whether the two parties should be given more time to file and serve their witness statements and documentary evidence.
8. It is quite apparent that the directions of December 19, 2022 were very clear on the responsibilities of each party whereby, the court even ensured that the compliance period on the issue of pleadings was severed from the filing of documents and statements. None of the defendants disputed the service of the amended plaint by December 19, 2022, but none had responded to that pleading by January 10, 2023 as directed by the court. It is pertinent to note that pleading is the foundational document upon which a party's claim is anchored upon.
9. The reasons why courts set time standards were clearly enunciated by myself in the case of *Isiolo Stage View Enterprises v Isiolo County Government & 2 others* [2018] eKLR in the following words:

“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.”



10. The provisions of section 1A of the *Civil Procedure Act* provides as follows:
- “(1) (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.
11. No plausible reasons have been advanced as to why the pleadings of the defendants were not filed in time. Nevertheless, I take due notice that the attorney general had filed their pleadings albeit late. The 4<sup>th</sup> defendant avers that their defence was ready by December 29, 2022 but not filed. The 4<sup>th</sup> defendant cannot peg the filing of their pleadings and documents on what other defendants and interested parties shall file and serve.
12. Taking into account that the mater already has a hearing date, the court proceeds to the following directions:
1. The amended statement of defence of 1<sup>st</sup> – 3<sup>rd</sup> defendant is hereby deemed as properly filed.
  2. The 4<sup>th</sup> defendant is granted upto March 23, 2023 to file and serve their statement of defence failure to which the matter shall proceed as an undefended claim against them.
  3. The plaintiff is at liberty to file and serve any reply to the aforementioned defences by April 7, 2023.
  4. All parties are directed to file and serve their witness statements and documentary evidence in a paginated trial bundle with index by May 7, 2023.
  5. Documents filed outside the given timelines shall stand as expunged.
  6. The hearing to proceed as scheduled on July 13, 2023.

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

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

**Wendo holding brief for Lubulellah for Plaintiffs**

**Abidha Nicholas for 4<sup>th</sup> Defendant**

**Court assistant: Vanilla**

