



**Kairanya v Jessel Ranching Co. Limited & 4 others (Environment & Land  
Case 16 of 2021) [2023] KEELC 19229 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19229 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT & LAND CASE 16 OF 2021**

**AK BOR, J**

**JULY 6, 2023**

**BETWEEN**

**EDWARD MUGAMBI KAIRANYA ..... PLAINTIFF**

**AND**

**JESSEL RANCHING CO. LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MARTIN PETER JESSEL ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, NANYUKI ..... 4<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. On November 16, 2022, this court fixed this case for hearing on February 15, 2023. The Plaintiff's Advocate Mr Muia Mwanzia attended court on May 15, 2023 and applied for an adjournment on the ground that the Plaintiff underwent eye surgery the week before and that he had informed the court and his counterparts of his predicament. Mr Mwangi appearing for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants opposed the application for adjournment and pointed out that it would have been helpful to have evidence presented to the court to confirm that the Plaintiff was indisposed. Mr Mwanzia told the court that the Plaintiff's wife went to his office and informed him that her husband had undergone eye surgery but the advocate did not ask for evidence. The court directed that the hearing would proceed in open court at 11:00 a.m. unless a doctor's note was filed in court to confirm that the Plaintiff was indisposed. Mr. Mwangi attended court at 11:00 a.m. but the Plaintiff was not in court and was not represented. The Plaintiff's suit was dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
2. The Plaintiff brought the application dated March 16, 2023 seeking to set aside the orders made on February 15, 2023 dismissing the suit and reinstatement of the suit for hearing on merit. He also sought



- stay of proceedings including the taxation of the Defendants' bill of costs that was slated for March 20, 2023. The Plaintiff swore the supporting affidavit where he deponed that he underwent eye surgery on September 23, 2022 and had been recuperating. He sent his wife to his advocate's office on February 13, 2023 to inform him that he could not attend court. He added that on February 15, 2023 he was to attend an appointment for checkup by ophthalmologist. He explained that his advocate who resides in Meru was unable to attend court physically on February 15, 2023 and annexed a photograph of a patient in hospital and some medical records presumably to prove the medical care he had received.
3. Mr Mwangi Kariuki, advocate having conduct of the suit for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants swore the replying affidavit opposing the Plaintiff's application. He pointed out that there was nothing to show that the Plaintiff was indisposed and could not attend court on February 15, 2023. He added that the discharge summary contradicted the Plaintiff's claim regarding the surgery and when it was conducted. He also mentioned that the instant application was only filed after the 1<sup>st</sup> and 2<sup>nd</sup> Defendants served their bill of costs.
  4. He urged the court to dismiss the application.
  5. The court directed parties to file submissions on the application. The Plaintiff submitted that he had the courtesy of writing to court beforehand and informing the court that he was undergoing a medical issue. He submitted that he could not attend court due to health reasons and was under medical review on the date scheduled for hearing. He urged that his reason for not attending court had been sufficiently explained and relied on *Josephat Thuo Githachuri v James Gaitho Kibue & Another; Gladys Nduta Mbugua (Interested Party)* [2021] eKLR.
  6. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their submissions where they submitted that the nature of the procedure or operation the Plaintiff was to undergo was not disclosed. The Defendants analysed the various medical records while pointing out that the Plaintiff failed to attach evidence of his inability to attend court. They also pointed out that the Plaintiff only brought the instant application after they served their bill of costs for taxation. In short, the Defendants contended that there was inordinate delay in bringing the application. The Defendants cited several decisions. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that the Plaintiff appears to be urging this court to grant his application on the basis of sympathy yet sympathy has no place in law and is not a point for consideration in granting this type of application. They maintained that the delay in bringing the application was not explained and concluded that if the court were inclined to grant the application then it ought to do so on conditions that the Plaintiff settles the throw away costs of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the sum to be determined by the taxing master within 30 days of the certificate of taxation and that the hearing of the case be held in abeyance until their costs are paid.
  7. The issue for determination is whether the court should reinstate the suit. The application is premised on the ground that the Plaintiff was unwell and could not attend court on February 15, 2023 when the matter was scheduled to be heard. The court agrees with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that there should have been evidence placed on the record to show that the Plaintiff was unwell and could not attend court. As the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's counsel pointed out, the documents exhibited by the Plaintiff are contradictory and do not show the date when the Plaintiff underwent the eye surgery if at all he did.
  8. Taking all factors into consideration, the court deems it just to reinstate the suit on condition that the Plaintiff settles the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' throw away costs to be determined by the taxing master within 15 days of the date of the assessment by the taxing master. Pending settlement of the costs, the hearing of this suit will be held in abeyance until the court gives further directions.
  9. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are awarded the costs of this application.



**DELIVERED VIRTUALLY AT NANYUKI THIS 6<sup>TH</sup> DAY OF JULY 2023.**

**K. BOR**

**JUDGE**

In the presence of:

Mrs. Muia Mwanzia for the Plaintiff

Mr. Mwangi Kariuki for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Ms. Mumbi Kiarie for the 3<sup>rd</sup> to 5<sup>th</sup> Defendants

Ms. Stella Gakii – Court Assistant

