



Primix Enterprises Limited v Fidei Holding Limited & 3 others (Environment & Land Case 497 of 2012) [2023] KEELC 18803 (KLR) (5 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18803 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 497 OF 2012**

LN MBUGUA, J

JULY 5, 2023

BETWEEN

PRIMIX ENTERPRISES LIMITED PLAINTIFF

AND

FIDEI HOLDING LIMITED 1ST DEFENDANT

KIKI INVESTMENT LIMITED 2ND DEFENDANT

GEORGE NGURE KARIUKI 3RD DEFENDANT

**STATUTORY MANAGER OF UNITED INSURANCE COMPANY
LIMITED 4TH DEFENDANT**

RULING

1. This matter was scheduled for hearing today but applications for adjournments have been made by all the advocates representing the various parties. Counsel for the plaintiff informs the court that they wrongly diarized the hearing date and thus informed their client that the matter is scheduled for hearing on 7.8.2023. That the said counsel duly informed his colleagues of this predicament yesterday (4.7.2023). That is the reason why they are seeking for an adjournment as their clients are absent.
2. Counsel for the 1st and 4th defendants informed the court that they were ready to proceed with plaintiffs case only, but their client was not available to attend court today.
3. Counsel for the 2nd & 3rd defendants applied for adjournment on the basis that they have an application dated 3.7.2023 seeking a stay of these proceedings as they intend to appeal against the ruling of this court delivered on 29.6.2023 (where the court dismissed their application to file a defence out of time).



4. I have considered all the arguments advanced herein geared towards adjourning this matter. The court takes into consideration that this is a very old case filed in year 2012 whereby on 19.1.2023, the court gave orders as follows:

“This case is adjourned at the instance of the plaintiff. Matter is marked as a Last Adjournment for the plaintiff”.

5. It is clear from the above orders that on 19.1.2023, the plaintiff had been put on notice that this matter would not be adjourned today. In so far as the application by Mr. Mutinda (counsel for the plaintiff) is concerned, I find that the court re-emphasized this hearing date, not once but twice as per the proceedings of this court of 22.6.2023 when the court indicated as follows “hearing on 5.7.2023 as earlier scheduled”, and again on 29.6.2023 when the court delivered a ruling. Counsel for the plaintiff has not indicated at what point he apparently misdiarized the hearing date during the aforementioned three occasions (19.1.2023, 22.6.2023 and 29.6.2023).

6. As for the case of 1st & 4th defendants, I find that no tangible reasons have been given for the absence of their witnesses.

7. On the case of 2nd & 3rd defendants, I find that the directions on their application dated 3.7.2023 were only given today. It follows that the prosecution of their application cannot be the basis for failing to prepare for the trial.

8. In the circumstances I reject all the applications for adjournments made by the respective counsels for the parties.

9. I direct that matter proceeds for hearing today. To this end, I will give all counsels an opportunity to avail their witnesses in the course of today.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JULY 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

IN THE PRESENCE OF:-

MWIKALI HOLDING BRIEF FOR MIRANGO FOR 2ND & 3RD DEFENDANTS

WAFULA FOR 1ST AND 4TH DEFENDANTS

MUTINDA FOR PLAINTIFF

