



Gituma & another v Manene & another (Being Sued as the Legal Representatives & Administrators of the Estate of Manene Tumanga - Deceased) (Environmental and Land Originating Summons E017 of 2022) [2023] KEELC 20480 (KLR) (4 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20480 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2022
CK NZILI, J
OCTOBER 4, 2023**

BETWEEN

DAVID MUNENE GITUMA 1ST PLAINTIFF

JAMES KINOTI KIRIINYA 2ND PLAINTIFF

AND

IBRAHIM MUTEA MANENE 1ST DEFENDANT

JUDAH MUNGATIA MANENE 2ND DEFENDANT

**BEING SUED AS THE LEGAL REPRESENTATIVES & ADMINISTRATORS OF
THE ESTATE OF MANENE TUMANGA - DECEASED**

RULING

1. By an application dated May 23, 2023, the applicants pray for leave to file additional documents as per the list dated March 6, 2023. An affidavit of Simon Mwangi advocate, sworn on May 23, 2023, supports the application. It is deponed that pleadings had closed before the applicant could obtain and file said documents, which were eventually filed as soon as they were received; otherwise, if not admitted as duly filed, it would deny the applicant the right to a fair hearing.
2. The applicant urges the court to find it in the interest of justice to allow the application. The application is not opposed by the respondent as indicated by Miss Mukaburu, advocate on record for the respondent.
3. This matter came up for a case conference on February 13, 2023, where the defendants indicated that they had complied with Order 11 of the *Civil Procedure Rules*. The court proceeded to list the matter for hearing on May 15, 2023. The plaintiffs failed to show up on the said date, and the court adjourned the case for July 31, 2023. On May 23, 2023, this application was filed. The court record



indicates that the defendant filed a replying affidavit to the originating summons on November 21, 2022, accompanied by witness statements and a list of documents.

4. After the suit was listed for a case conference on February 13, 2023, the applicant had more than 21 days to comply with Order 11 of the *Civil Procedure Rules*. The plaintiffs have yet to comply with Order 11 of the said Rules by filing a paginated bundle of documents that ideally would have included additional documents and witness statements.
5. Even though pleadings closed after the defendant filed a response to the originating summons on November 21, 2022, this court has on two occasions given the plaintiffs an opportunity to comply with Order 11 of the *Civil Procedure Rules* and file whatever additional documents and witness statements they may have. The plaintiffs failed to attend court on February 13, 2022 and May 15, 2022. It is a clear sign that the plaintiffs are no longer interested in fast-tracking the hearing of this suit, which was filed under a certificate of urgency. Be that as it may, I shall allow the application on condition that the plaintiffs file the compliance documents within 21 days from the date hereof, including the additional documents and witness statements. In default of non-compliance, the plaintiff's suit shall stand dismissed for non-compliance and non-prosecution.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 4TH DAY OF OCTOBER 2023**

In presence of

C.A Kananu

No appearance

HON. CK NZILI

ELC JUDGE

