



**Louaya v Letoya & another (Environment & Land Case 703 of 2017)
[2023] KEELC 20581 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20581 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 703 OF 2017
MN GICHERU, J
OCTOBER 11, 2023**

BETWEEN

DAVID LETELA LOUAYA PLAINTIFF

AND

DAVID PATEL LETOYA 1ST DEFENDANT

KAJIADO COUNTY LAND MANAGEMENT BOARD 2ND DEFENDANT

RULING

1. This ruling is on the notice of motion dated d16/5/2022. The motion which is under order 12 rule 7 *Civil Procedure Rules*, sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* and all enabling provisions of law seeks one main order namely:-

The court be pleased to set aside its directions issued on 20/4/2022 and further re-open the suit for hearing and evidence taking from all the parties herein.

2. The motion is supported by twenty nine (29) grounds and an affidavit sworn by the plaintiff and dated 7/3/2022. The gist of the above material is that the Plaintiff was never heard because he expected that the case would be heard virtually on 10/11/2021. As a result the case proceeded in his absence. If his application is not allowed, the Plaintiff will be deprived of his right to property and suffer prejudice while the Respondents will not suffer loss that cannot be adequately compensated by an award of damages.
3. The application is not opposed by the respondents' counsel even though he was served via email on 16/11/2022.
4. I have carefully considered the motion in its entirety including the grounds and the supporting affidavit and I find that it has no merit for the following reasons.



5. Firstly, I did not dismiss the plaintiff's suit under order 12 rule 3(1) of the *Civil Procedure Rules*. Instead I deemed the plaintiff's case as closed.
6. Secondly, in the judgment dated 20/4/2022 paragraphs 1, 2, 3 and 10 are devoted to the plaintiff's case. There is no issue raised by the plaintiff that the court did not address in the judgment.
7. Thirdly, I am not convinced that the plaintiff's counsel expected that the main hearing of a suit that is contested would be heard virtually. This court has never heard any case virtually. Such hearings are always physical. In addition to the above the cause list for this court always has a clause at the bottom which says that all hearings in Kajiado ELC are physical. I am not convinced either that my predecessor Hon. Justice Ochieng used to conduct hearings virtually.
8. Finally, even if I heard the plaintiff, I would not change the decision that I made because I considered all the evidence filed by him.

For the above stated reasons, I find no merit in the application dated 16/5/2022 and I dismiss it with costs.

It is so ordered.

Dated signed and delivered virtually at Kajiado this 11th day of October, 2023.

M.N. GICHERU

JUDGE

