



**Njeru v Muigai & another (Environment & Land Case 152 of 2013)
[2023] KEELC 20540 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20540 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 152 OF 2013
LN MBUGUA, J
OCTOBER 5, 2023**

BETWEEN

BONIFACE GIKUYA NJERU PLAINTIFF

AND

FRANK BOB MUIGAI 1ST DEFENDANT

ALICE WANJIRU NJUGUNA 2ND DEFENDANT

RULING

1. Before me is the plaintiffs application dated June 20, 2022 seeking orders to set aside or vary the orders of October 18, 2021 in which this application dated February 26, 2021 was dismissed. In that earlier application of February 26, 2021 the plaintiff was seeking injunction orders against the defendants.
2. On May 30, 2023, the application came up for hearing when counsel for the plaintiff informed the court that they had served the application vide an affidavit of service dated May 29, 2023. The court proceeded to give directions for the parties to file and serve their written submissions by June 30, 2023. The applicant was directed to serve the directions given on that day upon the respondent. The court was also to confirm that the application had indeed been served.
3. I have perused both the physical and the digital file (CTS) and I have not seen any affidavit of service dated May 29, 2023; indeed there is no evidence that the said application was ever served. The directions on filing of submissions and service of directions of May 30, 2023 were also not complied with. The only document that could be seen in the CTS is the paginated Trial Bundle filed on June 28, 2023.
4. Nevertheless on September 21, 2023, this court granted the Applicant an extension to file their submissions. This time round, there was compliance. The submissions are dated September 27, 2023 which I have duly considered. The Applicant has heavily relied on the case of [HKM v BKC \[2021\] eKLR](#) to buttress the point that their failure to attend court was not deliberate.



5. I have considered all the issues raised herein. In the case of *Lawrence Kinyua Mwai vs Nyariginu Famers Co Ltd & Another [2019] eKLR*, this court discouraged the practice of filing plethora of applications which derail the main hearing.
6. The provisions of section 43 of the *Environment and Land Court Practice Directions* Gazette Notice No 5178 (2014) stipulate that none compliance with court orders may attract sanctions.
7. Taking into account all the circumstances of this case, particularly the indolence manifested by the applicant in the prosecution of both the applications of February 26, 2021 and June 26, 2022, I find that the application dated June 20, 2022 has no merits. The same is hereby dismissed with no orders as to costs.

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

LUCY N. MBUGUA

JUDGE

In the presence of:-

Njamo holding brief for Kamotho for plaintiff

