



Wanjala & 12 others v Musioma & others (Environment & Land Case 300 of 2004) [2023] KEELC 20690 (KLR) (9 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20690 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 300 OF 2004
LN MBUGUA, J
OCTOBER 9, 2023**

BETWEEN

NEWTON WANJALA & 12 OTHERS PLAINTIFF

AND

JOSEPH ZIRO MUSIOMA & OTHERS DEFENDANT

RULING

1. I have considered the application made by the plaintiff and the interested parties (14th and 15th) to have the case adjourned on the basis that the matter has not been certified for trial, that there is a pending contempt of court application, that the matter was not listed for Pretrial Directions on 2.10.2023, that the file was to move alongside file No. 10641/2014 and that plaintiff was to amend their pleadings.
2. This happens to be the second application for adjournment being made by plaintiffs in their quest to have an adjournment today.
3. On Pre Trial directions, I find that the matter has severally been listed for Pre trial directions, for example on 31.5.2023. On 3.7.2023, the court conducted pre trial in the virtual platform in the morning and then proceeded with further pretrial directions at 2 pm in open court. The directions given there in were self executing such that parties had definite timelines to comply with courts directions. The court also gave a hearing date of today (9.10.2023) and 12.10.2023.
4. The date of 2.10.2023 came about as a routine measure to receive submissions in respect of the pending application and for further pretrial directions. That “further pretrial” in essence was a process to confirm compliance with directions of 3.7.2023. And since the said directions of 3.7.2023 were self executing, none availability of the file on 2.10.2023 has no bearing on the matter. To this end, the court will be guided by the holding in the cases of *Virginia Kathambi Maina v Nicholas Mwatika & 2 others* [2021] eKLR and *Moschion v Mwangi* (ELC Case No. 350 of 2018) 2023 KEELC.



5. On the pending application, the court duly gave directions on its application and what the court was to confirm is the filing of submissions on 2.10.2023. The court will still proceed to confirm issue of compliance today.
6. On amendments of pleadings, the court dealt with the issue in the ruling of 18.4.2023 hence I need say no more on that issue.
7. On the issue that this file is running alongside file No. 1064/2014 true, the ruling of 31.5.2023, gave directions for the orders given on 18.11.2020 and on 3.6.2021 to remain in force, such that the files were not consolidated but were to be heard alongside each other. I gave a rider on 31.5.2023 that proceedings are to be recorded separately in each file. It means that the proceedings in the two files should not be mixed up. The files can only be handled together and no more. In that regard, none of the two files is tied to the other at the hips in terms of the prosecution of the case.
8. To this end, and again considering that the matter is of year 2004, I decline to allow the application for adjournment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ndiso and Gichuhi for Plaintiff

Mwangi and Angwenyi for 1st & 2nd Defendants

Macharia for 3rd Defendant

Kipchirchir for 4th Defendant

Oroso for the 11th Interested Party (in main suit) and 14th and 15th Defendants in the Counter Claim

Kasim Felix Wekeso 2nd plaintiff

1st and 2nd Defendants

Plaintiffs

Patrick Kairu for 3rd Defendant

John Masesa for 4th Defendant

Mathew Mbaluka Mutiso 11th Interested Party (also 14th and 15th Defendant in Counter Claim

Court Assistant: Eddel

