



**Kimuri Housing Company Limited v Lukenya Ranching Cooperative Limited & 4 others
(Environment & Land Case 247 of 2017) [2022] KEELC 15745 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 15745 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 247 OF 2017**

CA OCHIENG, J

MAY 4, 2022

BETWEEN

KIMURI HOUSING COMPANY LIMITED PLAINTIFF

AND

LUKENYA RANCHING COOPERATIVE LIMITED 1ST DEFENDANT

MWANZO DEVELOPMENT COMPANY LIMITED 2ND DEFENDANT

MUITE WILLY 3RD DEFENDANT

MURITHIA WA – ANDU COMPANY LIMITED 4TH DEFENDANT

COMMISSIONER OF LANDS 5TH DEFENDANT

RULING

1. What is before court for determination is the Plaintiff's Notice of Motion application dated the August 30, 2021 brought pursuant to section 3A of the *Civil Procedure Act* as well as Order 51 of the *Civil Procedure Rules*. The Plaintiff seeks the following orders:
 1. That the further amended Plaintiff dated July 30, 2021 and filed on August 25, 2021 pursuant to the court's Ruling of June 29, 2021 be admitted out of time and deemed as duly filed and served on time.
 2. That the costs of this application be costs in course.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Jeremy Njenga, who is an Advocate in conduct of the matter on behalf of the Plaintiff. He explains that the delay in filing the Amended Plaintiff and avers that the Plaintiff's erstwhile advocates confirmed to them that they had not filed the amended Plaintiff within the period that had been granted. He states that the Ruling wherein the Plaintiff was granted leave, was delivered in the absence of the parties herein



and this explained the consequent delay in filing the amended Plaintiff. He deposes that he prepared, filed and served the further amended Plaintiff out of time. He contends that the Defendants will have an opportunity to respond to the further amended Plaintiff, if they so desire and hence none of them stands to suffer any prejudice if the orders sought are granted.

3. The 2nd and 3rd Defendants claim to have filed their response to oppose the instant application but the same is not in the court file.

The application was canvassed by way of written submissions but it is only the Plaintiff that filed the same.

Analysis and Determination

3. Upon consideration of the Notice of Motion application dated the August 30, 2021 including the respective affidavits and the Plaintiff's submissions, the only issue for determination is whether the Further Amended Plaintiff dated July 30, 2021 and filed on August 25, 2021 pursuant to the court's Ruling of June 29, 2021 should be admitted out of time and deemed as duly filed and served on time.
4. The Plaintiff in its submissions reiterates his averments and insists it has explained the reason for delay in filing the further amended Plaintiff. Further, that the delay was not inordinate. To buttress its averments, it relied on the following decisions: *Almond Resort Ltd Vs Mohamed Mahat Kuno* (2019) eKLR and *Nicholas Kiptoo Arap Korir Salat Vs Independent Electoral and Boundaries Commission & Others* (2013) eKLR.
5. The Plaintiff has sought for leave for the further amended Plaintiff dated July 30, 2021 and filed on 25th August, 2021 pursuant to the court's Ruling of June 29, 2021 to be admitted out of time and deemed as duly filed and served on time, which application was opposed by the 2nd and 3rd Defendants. The Plaintiff's Counsel explains that the Ruling in which they were granted leave, was delivered in their absence culminating in the delay in filing and serving the further amended Plaintiff.
6. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2015] eKLR the Supreme Court held that: 'These cases, whose jurisprudence is enshrined in article 50 of *the Constitution*, illustrate that courts have a duty to uphold reasonable, fair and just procedures, in order to avoid the violation of an individual's rights. The right to a fair hearing also includes the right to be heard and be accorded due process of the law. Therefore, in all court cases, judicial officers are mandated to ensure that due process of the law is followed. The apex Court is no exception to these principles.'

See also the case of *Stecol Corporation Limited v Susan Awuor Mudemb* [2021] eKLR

7. The gravamen of the dispute herein is whether to admit the further amended Plaintiff filed out of time to be deemed to be part of the Court Record. I have had a chance to peruse the court records and note on June 4, 2021, the impugned Ruling granting the Plaintiff leave was indeed delivered virtually in the absence of both parties. I note the Plaintiff who changed advocates proceeded to file the further amended Plaintiff on August 24, 2021, albeit without leave of court. The 2nd and 3rd Defendants were already served with the further amended Plaintiff and have not demonstrated what prejudice they stand to suffer if the same was admitted as part of the court record. Be that as it may, while associating myself with the decisions cited above noting that this matter has not been set down for hearing, while relying on article 50 of the *Constitution* which entitles a party to a right to fair hearing, and article 159 (2) (d) of the *Constitution* that stipulates that justice shall be administered with undue regard to technical rules of procedure including section 79G of the *Civil Procedure Act* that allows for enlargement of time, I opine that it would in the interests of justice if the Further Amended Plaintiff dated July 30, 2021 and



filed on August 25, 2021 pursuant to the court's Ruling of June 29, 2021 is admitted out of time and deemed as duly filed and served on time.

8. In the circumstance, I find the Notice of Motion application dated the August 30, 2021 merited and will allow it. I proceed to admit the Further Amended Plaint filed and served out of time as part of the court record. I further grant leave of fourteen (14) days to the Defendants to file and serve their respective further amended Defences.

Costs will be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 4TH DAY OF MAY, 2022

CHRISTINE OCHIENG

JUDGE

