



REPUBLIC OF KENYA



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Njenga v Wanjohi & another; Maina (Interested Party) (Environment & Land Case 324 of 2015) [2022] KEELC 4762 (KLR) (8 September 2022) (Ruling)

Neutral citation: [2022] KEELC 4762 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 324 OF 2015
EK WABWOTO, J
SEPTEMBER 8, 2022

BETWEEN

RUTH GATHONI NJENGA PLAINTIFF

AND

GEOFFREY NJUGUNA WANJOHI 1ST DEFENDANT

KAHAWA WEST INVESTMENT COMPANY LIMITED 2ND DEFENDANT

AND

FRANCIS NJIRE MAINA INTERESTED PARTY

RULING

1. Francis Njire Maina, the 3rd Party herein took out the Notice of Motion dated July 14, 2022 seeking for the following orders: -
 - i. Spent.
 - ii. That this court be pleased to order stay of further proceedings pending the hearing and determination of this application.
 - iii. That this court be pleased to set aside all proceedings relating to this matter and to hear the matter afresh.
 - iv. That there be an order that service was not properly dispensed with due to lack of service on the 3rd party applicant and he be granted an opportunity to defend himself by filing his documents.
 - v. That the 3rd party/applicant be granted an opportunity to file his documents and defend the suit.



- vi. That the costs of this application be provided for.
2. The application was supported by 13 grounds as detailed in the said application and also by an affidavit sworn by the applicant on July 14, 2022.
3. Pursuant to the court's directions issued on July 22, 2022, the court directed that the application be served on all parties and the same be canvassed by way of written submissions. The applicant was directed to file his written submissions by August 5, 2022 and all the other parties were expected to comply by filing their written submissions by August 19, 2022. At the time of preparation of this Ruling no response and written submissions had been filed by any of the Respondents herein.
4. I have considered the application, the grounds set out on the face of it, the facts deposed in the affidavit and the written submissions filed by the applicant dated August 3, 2022 and the issues for determination are as follows: -
 - i) Whether the 3rd party was properly served,
 - ii) Whether this court should proceed to set aside the proceedings herein as prayed for by the applicant.
 - iii) What are the appropriate orders to issue.

I will make a brief sequential pronouncement on the three issues herein.

5. On whether the 3rd party was properly served herein, I note that prior to the hearing of this suit on May 12, 2022, the Plaintiff filed an application dated June 14, 2022 which application sought for extension of time to apply for issuance of a 3rd party notice beyond 14 days of filing defence and the Application for the 3rd party notice be deemed to have been made within such extended time. From the court record, the said application was allowed by Lady Justice L. Komingoi on April 3, 2019. Subsequently thereafter, the matter came up for pretrial before the Deputy Registrar of this court on October 13, 2021 upon which Ms. Nkatha Advocate was present holding brief for Mr. Gachoka Advocate for the Plaintiff while Ms. Thuo Advocate was present for the 1st and 2nd Defendants and 3rd Party. As per the court record Ms. Thuo informed the court that the 3rd party was the director of the 2nd defendant and had been unwell but needed 30 more days to fully comply and file his documents. A request which was granted by the Deputy Registrar.
6. Subsequently thereafter when the matter was fixed for hearing on May 12, 2022 before me, the record shows that Mr. Gachoka Advocate was present for the plaintiff while Ms. Thuo Advocate was equally present holding brief for Mr. Kimani Kahete Advocate for 1st and 2nd defendant while Mr. Francis Njire Maina, the 3rd party was present in person. The 3rd party informed the court that he had been served with a hearing notice about one and a half weeks ago and he needed more time to prepare so that he could proceed with the hearing. The adjournment was declined. The court subsequently allowed the hearing of the plaintiff's case to proceed and later granted another date the November 10, 2022 for hearing of the defence and 3rd party's case.
7. The 3rd party has sought for orders to set aside all proceedings herein on account of not being served. However, the record clearly confirmed that the 3rd Party attended the courts proceedings on May 12, 2022 wherein he even sought for an adjournment. A party who attends court's proceedings cannot turn around and later say that I was not served. The 3rd party's contention that he was not served is an afterthought and the same is misplaced. The said position cannot be admitted by this court.



8. On the second issue as to whether the court should proceed to set aside the proceedings herein for the reasons that the 3rd party was not served, having found the 3rd party was able to attend the proceedings of May 12, 2022, it will be an absurdity and an abuse of the court process if the same were to be set aside since for all intents and purpose he was fully aware of the proceedings of this court.
9. In view of the foregoing, the request to set aside all the proceedings herein cannot be granted as prayed. However, for the interests of justice and considering the fact that the 3rd Party was acting in person on May 12, 2022 and now that he has appointed Counsel on record to act for him in the matter, I will grant him a final chance to file all his necessary documents that he intends to rely on during the hearing of his case so as the hearing of his case can proceed smoothly on November 10, 2022 as earlier scheduled.
10. In the end, the application dated July 14, 2022 is disposed of in the following terms: -
 - i. The 3rd party herein is granted leave to file and serve all his documents he intends to rely on during the hearing of his case within 14 days from today.
 - ii. This matter shall proceed for hearing of the defence and 3rd party's case on November 10, 2022 as earlier scheduled.
 - iii. Each party to bear own costs of the application.
11. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI BY EMAIL THIS
8TH DAY OF SEPTEMBER 2022.**

**E.K.WABWOTO
JUDGE**

