



**Kennedy Odhiambo Owiti t/a Odhiambo Owiti & Company
Advocates v Dominion Farms Limited & 3 others (Commercial
Case 1 of 2020) [2024] KEHC 6007 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6007 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
COMMERCIAL CASE 1 OF 2020
RE ABURILI, J
MAY 23, 2024**

BETWEEN

**KENNEDY ODHIAMBO OWITI T/A ODHIAMBO OWITI & COMPANY
ADVOCATES PLAINTIFF**

AND

DOMINION FARMS LIMITED 1ST DEFENDANT

LAKE AGRO LTD 2ND DEFENDANT

THE REGISTRAR GENERAL OF COMPANIES 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. I have considered the application by the 2nd Defendant's counsel for adjournment and for recalling of the proceedings which have proceeded with the plaintiff testifying. The 1st Defendant's counsel seeks for an adjournment and leave to file documents in defence. The 2nd, 3rd and 4th Defendants through Mr. Muhindi submits that they did not receive a hearing Notice for today and that he was called by the 1st Defendant's counsel and notified of the hearing which was proceeding but that when he joined the court platform, the internet dropped and he only re-joined two minutes into the hearing which had progressed.
2. That Mr. Odhiambo Advocate for the 3rd Defendant is sick recovering from surgery and that they intended to file documents in support of their defences opposing the application.
3. Ms. Oduor counsel for the plaintiff submitted that she has been serving all parties to this suit with notices as shown by the affidavits of service filed in the e-portal and that it would be prejudicial if the



defendants are allowed to file documents after the plaintiff has closed his case yet the defendants had all the time to file their documents as required by Order 11 of the *Civil Procedure Rules*.

4. I observe that at the commencement of the hearing, Mr. Mario had sought for an adjournment which was geared towards staying this suit pending determination of References allegedly filed against the various taxations by various courts, of the Plaintiff's Bills of Costs leading to the entry of Judgments and decrees drawn.
5. However, this court wishes to remind Mr. Mario that in the Ruling of 19th January 2024, this court dismissed the application by the 1st Defendant which sought for stay of this suit and on the same date, fixed the matter for pre-trial directions on 26th February 2024.
6. Regrettably, I was bereaved on 26th February 2024 hence a date was given for 2nd April 2024 and on the latter date, the court proceeded and gave directions, certifying the suit as ready for hearing.
7. As at 2nd April 2024, the defendants ought to have filed their witness statements or documents and since Mr. Mario was present in court on 19th January 2024 when the 2 Rulings were rendered, his client did not have to wait until today to seek leave to file their documents. No reasons have been advanced for the defendants' failure to file their documents. There is evidence on record that the Plaintiff has on all occasions served the Defendants with notices for mention and for hearing today.
8. This is a court of justice yes, but parties cannot be permitted to archive proceedings in court through deliberate delay as is evidenced in this case.
9. I appreciate that where a party or counsel is unwell, then the court must be considerate and accord an opportunity to the party to be heard so that they are not condemned unheard. However, where parties appear to deliberately scuttle hearings, the court would not allow that to happen.
10. Having said all that, a case is only as good in its determination if parties who have demonstrated that they are eager to be heard are accorded the opportunity to be heard. At times, parties have to be pushed and indeed, the push by this court is bearing fruits, albeit with some delays.
11. Despite delay in this case, justice can still be served by letting all to be heard now that they have shown a keen interest in the case.
12. In the premises, I exercise discretion, noting that there was system/internet downtime which blocked Mr. Muhindi from fully participating in the hearing as he could have cross examined the Plaintiff who had just concluded his testimony when Mr. Muhindi re-joined the online platform. He also happens to hold brief for a sick colleague.
13. That said, I hereby order as follows, so as to avoid back and forth with will delay this matter more:-
 1. That the Plaintiff's case is hereby reopened for further examination in chief and in cross examination.
 2. That the Defendants are granted 7 days of today to file and serve their documents and witness statements if any with corresponding leave to the Plaintiff to file any documents and or statements.
 3. That the 1st and 2nd Defendants shall each pay to the Plaintiff thrown away costs of Kshs.10,000 within 7 days of today.
 4. That the 1st and 2nd Defendants shall each pay court adjournment fees of Kshs.4,000 within the next seven (7) days of today.



5. That this matter shall be mentioned on 6th June 2024 to fix a further hearing date.
14. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 23RD DAY OF MAY, 2024

R. E. ABURILI

JUDGE

