



Otieno v Nyanuaya (Chairman Kisumu Centre Juakali Artisans Association) & 2 others; Registrar of Societies (Interested Party) (Civil Case E017 of 2023) [2024] KEHC 14505 (KLR) (21 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14505 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE E017 OF 2023
RE ABURILI, J
NOVEMBER 21, 2024**

BETWEEN

FRANCIS OUMA OTIENO PLAINTIFF

AND

JACOB NYANUAYA (CHAIRMAN KISUMU CENTRE JUAKALI ARTISANS ASSOCIATION) 1ST RESPONDENT

DAVID ODANGA (SECRETARY KISUMU CENTRE JUAKALI ARTISANS ASSOCIATION) 2ND RESPONDENT

EVELYNE EGESA (TREASURER KISUMU CENTRE JUAKALI ARTISANS ASSOCIATION) 3RD RESPONDENT

AND

THE REGISTRAR OF SOCIETIES INTERESTED PARTY

RULING

1. I have, before writing this ruling, taken the parties who are present, through the proceedings in this matter right from pretrial conference to the fixing of the hearing date and eventually to the hearing which took place on 17/10/2024.
2. This matter is due for Judgment today but the Defendants waited until a few days to the judgment delivery is when they filed the application dated 12th November 2024 under certificate of urgency seeking to arrest the Judgment and to allow the defendant to testify in defence and counterclaim. That is the application which came before me on a skeleton file on 13/11/2024 and I directed the applicants/defendants to serve the plaintiff's counsel for inter partes directions today.



3. I observe that the Plaintiff's case was heard and closed on 17th October 2024 and because the defendants were absent, without any reason, the defence case was closed by the court and a Judgment date set for today.
4. There is a counterclaim which was not closed or dismissed for want of prosecution as the plaintiff did not ask the court to dismiss it. It follows that though the defence case was closed, the counterclaim is still open and it would be unjust to lock out the defendants from prosecuting their counterclaim, now that they have shown interest.
5. The issue appears to be the defence counsel Miss Awuor who misled her client on the hearing date and later swore and made him to swear scandalous affidavit in support of the application for arresting of the Judgment.
6. The advocate failed to inform the court the reason for absence of the clients and those reasons should have been contained in the affidavit since the power to stay proceedings is in the discretion of the court, which discretion must be exercised judiciously and not in favour of a party who is hell bent to derail and delay justice.
7. Article 159(2) of the Constitution is clear on the principles that this court must be guided by, in the administration of justice among them, is that justice shall be done to all, irrespective of status, justice shall not be delayed and the purpose and principles of the Constitution shall be protected and promoted.
8. One of the inherent rights that all parties to suits are guaranteed is the right to accessing justice and as stated above, justice shall be done to all irrespective of status. Secondly, that justice shall not be delayed.
9. Additionally, the right to a fair hearing as stipulated under Article 50(1) of the Constitution is guaranteed. Notwithstanding the unnecessary mud thrown at this court, I am alive to the fact that I do not serve friends of the court and more often than not, parties try as much as possible to pull the court to descend into their arena of disputes so that they can malign the Court. I take in stride as a dispenser of justice without fear or favour, and as I am conscious of the fact that some parties come to court expecting decisions to go their way notwithstanding the merits of their cases but get disappointed when they realise that the court is the type that cannot be manipulated and I dare say so, I will exercise the judicial authority conferred on me by the people of Kenya under Article 159 of the Constitution and administer justice in this matter knowing that this is not the only court that exists to hear these kind of disputes pitying warning parties with vested petty-politico-financial interests which as a Judge, I took oath of office never to be part of such manipulations and considerations. A party's case before a court of law should always be determined on the basis of evidence and the law and therefore as a Judge, I must continue to declare that manipulation and intimidation cannot make me render a decision in favour of any party.
10. Therefore, on the court's own motion, I shall not deliver the judgment in this matter and order that the defence case which was closed for non-attendance to prosecute on 17th October 2024 is hereby reopened and the defendants are given the opportunity to testify on their defence and prosecute their counterclaim as well.
11. As it was not the Plaintiff's or the court's fault to close the defence case noting that the defendants appear to have deliberately absconded court on 17th October 2024, for reasons known to themselves, perhaps, from the tone of their affidavit and that of their advocate, to get a friendly judge to move in their direction and will, the Plaintiff shall have costs of the application dated 12th November 2024 herein assessed at Kshs.15,000 payable within 14 days of today.



12. The defence and counterclaim shall be heard in the new term before a different Judge from myself, whom, despite fixing the hearing date on 30th May 2024 by consent of both parties for 17th October 2024, the defendants were determined that I should not hear the case because they tend to know the outcome before the judge renders herself on the merits thereof.
13. The injunction which was granted by this court remains in force until this suit is heard and determined on its merits. In other words, the Association shall not hold any elections until this suit is heard and determined.
14. Hearing on 20th February 2025 of the defence and counter claim.
15. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 21ST DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

