



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 144 OF 2017

JULIUS MASINDE.....PLAINTIFF

VERSUS

FRANCIS WAFULA.....DEFENDANT

RULING

1. This court has been invited by the plaintiff's counsel to strike out the defence and other documents filed alongside the defence on **1/4/2019**. It is an application that is long overdue. There is no formal application on the record for leave to file the defence and the other documents, but Mr. Kundu, at the tail end of his submissions in opposition to the application for striking out, made an impassioned plea for the defence and other documents to be deemed as properly filed. Mr. Kundu explained that the delay in filing them was occasioned by the failure on the part of the defendant to furnish the relevant documents within the stipulated time.

2. I have considered the application and the response. Ordinarily pleadings ought to be filed in a sequential and orderly manner, and the Civil Procedure Rules provide for the timelines to be complied with in doing so. The defendant in this case never responded to the summons in good time; though the suit was filed on **23/8/2017**, the defendant had not filed the defence or other documents by **6/4/2018**; and the matter was listed for formal proof for **1/8/2018**. It never proceeded on that date. It was further scheduled for formal proof on **4/4/2019** but the defendant intercepted the formal proof by lodging an application dated **4/2/2019**. At the inter-partes hearing of that application on **18/2/2019**, the plaintiff's counsel Mr. Teti graciously allowed the same by consent and part of the terms thereof were that the defendant would file and serve his defence within **7 days** from **18/2/2019**. That never happened. Instead defence was filed on **1/4/2019**, which in Mr. Teti's mathematical calculus rendered the delay to be about **50 days**. This is inordinate delay. This court should not condone delay in the part of a defendant which in turn delays the suit's finalization. The necessary sequel of allowing Mr. Kundu's impassioned plea to deem the defence and other documents as properly filed is obvious: there is bound to be more delay in the finalization of this suit as parties await compliance with the necessary steps that follow the filing of the defence, absent a consent to proceed immediately after the defence is, perchance, allowed to remain on the record.

3. I have anxiously considered the conduct of the defendant and his counsel and found it to be quite egregious - there should have been an application for extension of time before this hearing date, but they preferred to live as though rules did not exist or as if the rules never bound them. This presumptuous approach must be discouraged for it occasions this court quite a huge amount of backlog as parties and their counsel galvanize themselves into actions resembling compliance only after the hearing date has been fixed, or on the date of the hearing.

4. Be that as it may, I have considered that at least there is a defence on the record and a court of justice should rarely ignore a party's defence however irregularly it has been filed. All that this court can state here is that this practice of delaying pleadings and acting as though rules never existed must be met with the appropriate and commensurate sanctions even as the court struggles to afford the offending party a hearing in the matter.

5. In view of the foregoing, I must decline to grant the application for striking out defence made by Mr. Teti and allow Mr. Kundu's application though oral for orders deeming the defence and other documents as properly filed.

6. I therefore decline the striking out application. I also order that the defence and other documents filed with it on **1/4/2019** are hereby deemed as properly filed and served. For that delay and for occasioning this adjournment the defendant must of necessity pay penance. I therefore order that the defendant shall pay to the plaintiff the sum of **Kshs.15,000/=** within **7 days** from today failure to which the defence filed herein shall stand struck out automatically and the matter shall proceed to formal proof.

7. This matter will be mentioned on **18/3/2020** to fix a fresh hearing date. Leave is granted to the plaintiff to file a further witness statement and further list of documents with a reply to the defence if need be within **14 days** of today.

Dated, signed and delivered at Kitale on this 3rd day of March, 2020.

MWANGI NJOROGE

JUDGE

3/3/2020

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Teti for the plaintiff

Mr. Kundu for the defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

3/3/2020