



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**

**ELC NO. 29 OF 2015**

**STELLA KUMBI MCHARO (Suing in her capacity as personal representative of the  
estate of EVANS KAFUSI MCHARO (Deceased))..... PLAINTIFF**

**VERSUS**

**JOSEPH RUA.....1<sup>ST</sup> DEFENDANT**

**CHENGO.....2<sup>ND</sup> DEFENDANT**

**RULING**

This case was commenced through a plaint which was filed on 24 February 2015. I note that in her plaint, the plaintiff, suing as the personal representative of one Evans Kafusi Mcharo (deceased) claims that the land parcel Subdivision No. 1095 (Original number 547/7) Section III Mainland North, was registered in the name of the deceased and that in December 2014, the defendants wrongfully entered the suit land and took possession of it. In the suit, she seeks inter alia, a permanent injunction against the defendants.

2. The provisions of Order Rule 3 Rule 2 provide that when filing a plaint, the same should be accompanied by a list of witnesses to be called at the trial; written statements signed by the witnesses (excluding expert witnesses); and copies of documents to be relied on at the trial. With leave of the court, the written witness statements can be filed at least 15 days prior to the pretrial conference. The plaint herein was filed without the above required accompanying documents.

3. The plaint was contemporaneously filed with by an application for injunction. The defendants entered appearance and filed a replying affidavit to oppose the application for injunction. Within their reply, they did state that despite having been served with summons, together with the plaint, the said plaint had no statement, no list of documents and no list of witnesses. In their defence, the defendants contend that they live on the land described as Plot No. 337/III/MN and not the Plot No. 547/III/MN. They also filed a response to the application for injunction. The application for injunction was heard and a ruling delivered on 6 October 2016 in favour of the plaintiff.

4. On 12 April 2017, the plaintiff filed a list of documents accompanied by copies of the supporting documents. There was however not filed any list of witnesses nor witness statements. This is despite being given 14 days to do so when the matter came up for a pre-trial conference on 4 April 2017. Another 30 days was given on 12 November 2019 for the parties to fully comply. The 30 days lapsed and the matter was mentioned on 26 February 2020. Counsel for the plaintiff stated that he is yet to file his client's witness statements and asked for more time.

5. I was not persuaded of the seriousness of the plaintiff in complying with pre-trials and issued a notice for the plaintiff to show cause why her suit should not be dismissed for failure to comply with pre-trial directions.

6. An affidavit has been filed by the plaintiff. She has asked that in the interests of justice she be allowed to file her statement.

7. Parties need to ensure that they follow the provisions of the Civil Procedure Rules in filing statements and documents. Without these being filed, the case can never be considered ready for hearing and will drag on and on. This matter has been in court for over 5 years now and has never been made ready for trial. It is this kind of tardiness that adds to case backlog. I am personally not sympathetic to litigants who bring their cases to court but are never in a hurry to make them ready for trial. The plaintiff in this instance has been given several chances to make her case ready but she has not been keen to comply with orders of court. The defendants on the other hand are hamstrung as they do not know what sort of case they are facing. The plaintiff's actions are certainly prejudicing the defendants who deserve a speedy hearing of the matter.

8. Having said that, out of my discretion, I will give the plaintiff 14 days to file and serve her list of witnesses and statements of witnesses. If none are filed and served, her case will stand dismissed, for want of compliance with pretrial directions.

9. The plaintiff will further pay a fine of KShs. 10,000/= for the late filing of her documents. This be paid within 14 days of today.

10. I will mention the case on 21 July 2020 to ensure that these orders have been complied with or whether to order the dismissal of the plaintiff's suit.

11. Orders accordingly.

**DATED AND DELIVERED 18 DAY OF JUNE, 2020**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT**

**MOMBASA**

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