



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC NO. 261 OF 2009**

**OMAR MOHAMED MASUMBUKO .....PLAINTIFF**

**VERSUS**

**MOHAMMED MAHFUDH SAAD .....1<sup>ST</sup> DEFENDANT**

**ISAAC MUNYI NJERU .....2<sup>ND</sup> DEFENDANT**

**RULING**

1. On 5 November 2019, I granted leave to the plaintiff to file an amended plaint pursuant to an application dated 12 February 2019 seeking leave to amend the plaint. I directed that the amended plaint be filed within 14 days and be served in the usual manner. I further directed the matter to be mentioned on 20 February 2020. There was no sitting on 20 February 2020 and the matter was fixed for mention on 5 March 2020. On that date, Mr. Okanga held brief for Mr. Kadima for the plaintiff, whereas Ms. Moolraj was present for the 1<sup>st</sup> defendant. There was no amended plaint filed. My perusal of the file did not also show whether the 2<sup>nd</sup> defendant has ever been served with summons. Mr. Okanga could not respond on why the amended plaint has not been filed, nor on the issue of service upon the 2<sup>nd</sup> defendant. He sought another mention date. I gave 16 June 2020 for mention and directed the plaintiff to put his house in order. I ordered the plaintiff to pay Court Adjournment Fee of KShs. 2,000/= and KShs. 2,000/= costs to Ms. Moolraj within 14 days.

2. On 16 June 2020, Mr. Amadi appeared for the plaintiff whereas Ms. Moolraj appeared for the 1<sup>st</sup> defendant. It emerged that the court adjournment fees had not been paid and neither had the costs to Ms. Moolraj. Moreover, no amended plaint had been filed. I thought the plaintiff was not keen with the matter and sought counsel to give me reasons why the suit should not be dismissed. Mr. Amadi conceded that the plaintiff had not complied with the court orders on payment of court fees and costs to counsel. He stated that his client was eager to proceed with the case and sought 7 days to pay the fees. Ms. Moolraj was not convinced and urged the court to dismiss this suit.

3. I have gone through this file. The case was filed in the year 2009 and has been in court for 11 years. In the plaint, the plaintiff seeks orders to be declared the owner of the land parcel Mombasa/Block XI/983 which he contends was allotted to him in December 2002 and an allotment letter issued. He claimed that the 2<sup>nd</sup> defendant fraudulently forged papers to obtain title to the suit land. As I mentioned earlier, I have no evidence that the 2<sup>nd</sup> defendant has ever been served with summons. The 1<sup>st</sup> defendant filed defence on 4 December 2009 and pleaded to be an innocent purchaser for value and in occupation of the disputed land since the year 2003.

4. Owing to its age, the court on its own motion fixed the case for hearing on 12 February 2019. The case was dismissed for the plaintiff failed to prosecute the case. There followed an application to reinstate the dismissed suit which was allowed on 18 June 2016. I have already mentioned that on 5 November 2019, the plaintiff was granted leave to amend the plaint, and that nothing has been done yet.

5. It is apparent that the plaintiff has caused significant delay in the prosecution of his case. This clearly prejudices the defendants. Despite leave being granted to file an amended plaint, none has been filed within the 14 days given. Court fees and costs to counsel have also not been paid.

6. I will bend over backwards to accommodate the plaintiff but payment of court fees and costs to counsel are not negotiable. The plaintiff must pay the court adjournment fees and costs to counsel that had earlier been ordered. The plaintiff will pay a further adjournment fee of KShs. 2,000/= and a further KShs. 4,000/= to Ms. Moolraj for the attendances of 16 June 2020 and today's attendance. All these must be paid within the next 7 days. The amended plaint must be filed within the next 14 days but the plaintiff will pay a penalty of KShs. 3,000/= for not complying with the earlier order to file the amended plaint in 14 days. If the plaintiff defaults on any of the above, then his suit will stand dismissed.

7. Orders accordingly.

**DATED AND DELIVERED THIS 30 DAY OF JULY 2020**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**