



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENT & LAND COURT
ELC CIVIL SUIT NO. 280 OF 2015

HON. DAVID K SIFUNA.....PLAINTIFF/RESPONDENT

-VERSUS-

EMILEY KIVALI MULAYA.....1ST DEFENDANT/1ST RESPONDENT

NELSON MUTURI DUMBEIYA2ND DEFENDANT/2ND APPLICANT

RULING

There are several applications pending in this matter which applications remain unprosecuted. The Plaintiff filed a Notice of Motion, dated **15th December 2014** under *Certificate of Urgency* on **17th December 2014**, and obtained interim orders and the matter was ordered transferred to Mombasa Environment & Land Court.

From the Court record, the matter was re-transferred to Milimani Environment & Land Court and placed before **Hon.Mutungu J** on **20th July 2015**, who directed that the said matter be mentioned on **22nd September 2015**, to confirm if parties had consented to dispense with the interlocutory application and proceed to the main trial. The matter was later listed before me on **26th October 2015**, for directions.

Meanwhile, the 2nd Defendant had filed a Notice of Motion dated **25th February 2015**, and on **26th October 2015**, the Court directed that the two Notices of Motion be canvassed together. Before the two pending applications could be set down for hearing, the plaintiff herein filed another Notice of Motion dated **26th April 2016**, seeking for Judgement on Admission. The same was set down for hearing on **11th October 2016**.

Further on **19th September 2016**, the intended interested party filed another Notice of Motion dated **19th September 2016**, seeking for several prayers among them joinder of the stated proposed interested party and transfer of the suit to **Kitale, Environment & Land Court**. This Notice of Motion dated **19th September 2016**, was also set for hearing on **11th October 2016**.

On **11th October 2016**, when the matter came for hearing, the advocates appearing only referred to Notices of Motion dated **26th April 2016**, and **19th September 2016**. There was no reference to the Notice of Motion dated **25th February 2015**. The Court then directed that the Notice of Motion dated **26th April 2016**, be canvassed by way of written submissions and time frame was set for filing of Responses to the Notice of Motion dated **19th September 2016**, and matter was to be mentioned on **26th October 2016** for

further directions. On the **26th October 2016**, **Mr Makokha** for the Plaintiff submitted that the Court should hear the Notice of Motion dated **26th April 2016**, first as it has the effect of concluding the matter completely.

Mr Nderitu submitted that the court should first hear the Notice of Motion dated **19th September 2016**. **Mr Muturi** also supported the hearing of the Notice of Motion for joinder first. **Mr Muturi** also submitted that he has a pending application for Summary Judgement dated **25th February 2015**, which had not been given a hearing date. However, **Mr Makokha** insisted that the court should hear the application for entry of Judgement on Admission as it is capable of settling the matter herein wholly. The Court then gave directions on **27th October 2016**, and directed that the two Notices of Motion dated **26th April 2016**, and **19th September 2016**, be canvassed together by way of written submissions. Further **Mr Makokha** for the Plaintiff was directed to inform the court on the next mention whether he still intended to pursue the Notice of Motion dated **17th December 2014**, or whether he had abandoned the same.

The said Directions of **27th October 2016**, led to the filing of this Notice of Motion dated **31st October 2016**, by the 2nd Defendant. The 2nd Defendant sought for stay of Directions issued by this court on **27th October 2016**, and for review, vary or setting aside of the said directions.

Mr Muturi further sought for directions on the Notices of Motion dated **15th December 2014**, and **25th February 2015**. The Instant application dated **31st October 2016**, is opposed by the Plaintiff and the 1st Defendant. They termed the instant application fatally defective, incompetent, and bad in law, misconceived and an abuse of the Court process. The said application was supported by the intended proposed party.

The parties herein have canvassed the said application by way of written submissions which this court has carefully considered.

The application is not premised under any provisions of the law. However **Order 51 Rule 10(2)** provides that no application shall be defeated on a technicality or for want of form that does not affect the application.

Further the court is enjoined by **Article 159 (2) (d)** of the Constitution to administer justice without undue regard to technicalities. The Directions issued by the Court on **27th October 2016** were directions issued in exercise of the court's discretion to ensure that the matters in court are prosecuted expeditiously. The Court also took into account the spirit of **Sections 1A and 1B** of the **Civil Procedure Act** on the overriding objective of the Act which is to ensure expeditious disposal of suits before the court. It is evident that there are several unprosecuted applications pending in this matter. In promoting the spirit of **Sections 1A and 1B**, the Court did give the directions, it did on **27th October 2016**.

However, the duty of the Court is to ensure that justice is done and also seen to have been done. Section 3A of the Civil Procedure Act enjoins the Court to make such orders that are necessary for the end of justice to be met and to prevent abuse of the court process. It is indeed correct that the plaintiff herein has a pending Notice of Motion dated **15th December 2014**, in which he is enjoying interim orders. It is also evident that the 2nd Defendant has a pending application for summary judgement which has not been given a hearing date. The Plaintiff has filed another Notice of Motion dated **26th April 2016**, seeking entry of judgement on admission. There is a further application dated **19th September 2016**, seeking for joinder of the stated applicant and transfer of the suit to **Kitale Environment & Land Court**. Given that the intended interested party may wish to participate in the Notice of Motion dated **26th April 2016**, if at all he will be enjoined, the court finds that the Court herein can use its inherent jurisdiction to review the Directions that it issued on **27th October 2016**.

The Court finds that in the interest of justice and even for consistency in the proceedings, it would not prejudice any party herein if the Directions issued on **27th October 2016**, are reviewed.

For the above reasons, the Court finds that it will be proper and just to first deal with the application for joinder dated **19th September 2016**. Thereafter, the Court will issue directions on the prosecution of the Notices of Motion dated **25th February 2015**, and **26th April 2016**, after the determination of the Notice of Motion dated **19th September 2016**.

The parties should ensure compliance with the time frame set for prosecution of Notice of Motion dated **19th September 2016**, Interim Orders existing will be extended until the next mention date.

It is so directed.

Dated, Signed and Delivered this **2nd** day of **December, 2016**

L.GACHERU

JUDGE

In the presence of :-

.....for the Plaintiff/Respondent

.....for the 1st Defendant/Respondent

.....For the 2nd Defendant/Applicant

.....for the proposed interested party

Court Clerk :

L.GACHERU

JUDGE