



REPUBLIC OF KENYA

High Court at Nakuru

Environmental & Land Case 155 of 2012

TRIBHOVAN HIRJI PESHAVARIA

(Administrator of the Estate of the late

LAUJIRUDA DAYALJI RAJA VORALIA & KARSAN DEWSHI).....PLAINTIFF

V E R S U S

JOHNSON KAMAU MACHARIA AND 15 OTHERS.....DEFENDANT

R U L I N G

The Application for Notice of Motion dated 28/3/2012 came up for hearing before me.

Mr. Ntabo appeared for the applicant, Mr. Simiyu for the 1st, 4th, 5th, 7th, 9th, 10th, 13th, 14th, 15th and 16th defendants and Mrs. Gatei for the 6th and 11th defendants.

The 8th defendant did not make an appearance but had filed his replying affidavit to the application on 14/9/2012. Mr. Ntabo stated that he was ready to proceed with the application but Mr. Simiyu and Mrs. Gatei were not and sought leave from the Court to file their replies within 14 days. Mr. Ntabo did not object to this. The Court granted them 14 days leave to file their replies on condition that they pay the court adjournment fees for the day plus the plaintiff's counsels costs at Kshs.2,000/= .Hearing of the application was set down for 7/5/2013.

When parties appeared before me on 7th May, 2013, counsels for the plaintiff and the 8th defendants were ready to proceed.

Again the defendant's advocates (save for the 8th defendant's counsel) had neither paid the court adjournment fees, counsels costs nor filed their replies within the stipulated time.

Mr. Nyamwange holding brief for Mr. Ntabo urged court to strike out the grounds of opposition filed by the defendants and disallow any replies in the future from the rest of the defendants. He was ready to argue the application.

I have read the Notice of Motion dated 28th March, 2013 which seeks reinstatement of the suit which has since abated. Although the court can proceed and hear the application in the absence of the defendants, it is my view that all parties should be given their day in court.

Having said that, court orders must be obeyed and procedure must be followed. Counsels should always be ready to bear the consequences when this is not done.

The upshot of the foregoing is that:

- 1) The grounds of opposition filed out of time on 7th May, 2013 are expunged from the court's records.
- 2) Counsels are at liberty to apply for leave to file their replies.
- 3) Counsels for the 1st, 4th, 5th, 7th, 9th, 10th, 13th, 14th, 15th and 16th defendants jointly with Counsel for the 6th and 4th defendants must pay the court adjournment fees and advocates costs as ordered on 21/2/2013.
- 4) Both counsels shall further pay Kshs.5,000/= jointly to the plaintiff for inconvenience caused on 7/5/2013 plus court adjournment fees for 7/5/2013.
- 5) The executive officer is directed not to receive or receipt any documents from the respondents until the fees are fully paid.

Dated, Signed and Delivered this 9th day of May, 2013.

**L N WAITHAKA
JUDGE**

PRESENT:

Ms. Wanjiru for 6th and 11th defendant

Mr. Nyamwange holding brief for Mr. Ntabo for applicants

No appearance for defendants

No appearance for 8th defendants

Stephen Mwangi – Court Clerk

**L N WAITHAKA
JUDGE**