



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 127 OF 2017

(FORMERLY NAIROBI HCC NO. 290 OF 2002)

JEREMIAH MATOKE.....PLAINTIFF/RESPONDENT

VERSUS

KENYA COMMERCIAL BANL LTD.....1ST DEFENDANT/APPLICANT

WILLIAM WILHITE AYIENDA.....2ND DEFENDANT/RESPONDENT

R U L I N G

1. By an application dated 27/6/2018 the 1st defendant/applicant sought the following orders:-

- 1. That this matter be certified urgent and be dispensed with in the first instance.**
- 2. That there be stay of submissions and judgment pending hearing and determination of this application.**
- 3. That the hearing of the case be reopened and the 1st defendant be allowed to cross examine the plaintiff and call their witness to testify.**
- 4. Costs be in the cause.**

2. The application is brought under the provisions of *Article 50 (1)* and *Article 159 of the Constitution of Kenya, Sections 1A 1B, 3 and 3A of the Civil Procedure Act Cap 21* and *Order 51 Rule 1 of the Civil Procedure Rules (2010)*. The grounds on which the said application is made are stated at the foot of the application and reiterated in the sworn supporting affidavit of J.N. Wanjala Advocate dated 27/6/2018 as well as her supplementary affidavit sworn on 24/7/2018. The gist of the application is that the 1st defendant was not heard in the case and that the court omitted the record an order dispensing with the 1st defendant's presence in these proceedings hence putting at risk of adverse orders. The 1st defendant principal grievance is therefore that it was not granted a hearing at the trial of the suit.

3. The application is opposed by the plaintiff who filed a replying affidavit through his advocate one Patrick Owino Mulaku on 12/7/2018. In that affidavit he avers that the 1st defendant's counsel were always aware of the hearing and mention dates as fixed by this court from time to time and that the plaintiff would be prejudiced if this long standing litigation were delayed anymore by the 1st defendant. The plaintiff accuses the defendant of wilfully ignoring the court process.

4. I have considered the application and the response in this matter and in my view the only prejudice that would suffered by the plaintiff is that he will have to wait for a little more for his judgment in the matter. I find that parties should be heard on merit and it is appropriate in this matter to allow the evidence of the 1st defendant in this suit.

5. It is the opinion of this court that reopening of this case will do justice to all the parties and each will go home satisfied that they have been heard on the merits. I find therefore that the application by the 1st defendant has merit and that the cross-examination of the plaintiff by the 1st defendant and the presentation of the evidence of the 1st defendant will therefore be allowed.

6. I therefore grant the application as prayed. I also direct that the parties shall take a hearing date in September, 2018 for both the cross examination of the plaintiff as well as the taking of evidence of the 1st defendant in the suit. All necessary documents that the 1st defendant intends to rely on shall be filed in a bundle, duly indexed and paginated, and shall be served on the other parties within 14 days of this date without fail in preparation for the conclusion of the hearing of this suit in the month of September, 2018.

Dated, signed and delivered at Kitale on this 30th day of July, 2018.

MWANGI NJOROGE

JUDGE

30/7/2017

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Analo holding brief for Namada for plaintiffs

N/A for the defendants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

30/7/2018