



China Wu Yi Company Limited v Credible Farmlines Limited (Environment & Land Case 117 of 2018) [2024] KEELC 416 (KLR) (29 January 2024) (Ruling)

Neutral citation: [2024] KEELC 416 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 117 OF 2018
BM EBOSO, J
JANUARY 29, 2024**

BETWEEN

CHINA WU YI COMPANY LIMITED PLAINTIFF

AND

CREDIBLE FARMLINES LIMITED DEFENDANT

RULING

1. Two applications fall for determination in this ruling. The first application is the Notice of motion dated 3/10/2022 through which the plaintiff seeks interlocutory injunctive orders pending the hearing and determination of the application. The second application is the notice of motion dated 22/11/2023 through which the defendant seeks orders re-opening the trial. I will dispose the two applications sequentially in the above order.
2. I have carefully examined the interlocutory reliefs that are sought in the notice of motion dated 3/10/2022. It is clear from the wording of the prayers in the application that all the itemized reliefs to be granted pending the hearing and determination of the application. This means that as at the time of rendering this ruling, all the interlocutory reliefs sought in the application will be spent. Put differently, there is nothing sought beyond the date of delivery of this ruling. Secondly, the subject matter of the substantive suit are LR No 487/128 and 129. However, the prayer in the application relate to LR No 487/127. For the above reasons, I find the application to be incompetent. I accordingly strike out the application for being incompetent. The plaintiff shall bear costs of the application. I now turn to the application dated 22/10/2022.
3. As indicated in the opening paragraph of this ruling, through the application dated 22/10/2022 the defendant seeks an order re-opening trial in this suit. The application is premised on the grounds set out in the motion and in the supporting affidavit sworn on 22/11/2022 by John Kimani Mwangi. The case of the defendant is that their advocates, M/s P.K. Muriithi & Company Advocates, abandoned the case without informing them nor filing an application for leave to cease acting for them.



4. The plaintiff opposed the application dated 22/10/2022 through a replying affidavit sworn on 17/4/2023 by Calvins Ochieng. The plaintiff faulted the defendant for what they termed as deliberate tactics aimed at delaying the conclusion of this case. They urged the court to reject the application.
5. I have considered the application, the response to the application and the parties respective submissions. The single question to be answered in this ruling in relation to the application dated 22/10/2022 is whether a proper basis has been demonstrated to justify exercise of the discretion of re-open trial in this suit.
6. Hearing of this suit proceeded ex-parte on 16/2/2022. The plaintiff led evidence by one witness and closed their case. The court fixed the case for mention on 11/5/2022 for the purpose of confirming filing of written submissions. On 11/5/2022 counsel for the plaintiff indicated to the court that they had encountered administrative hitches which made it impossible for them to file and serve written submissions. The court fixed the case for mention on 23/6/2022. The court did not, however, sit on 23/6/2022. The case was mentioned before the Deputy Registrar and fixed for mention on 21/9/2022. On 20/9/2022, it transpired that the plaintiff had not served a mention native. Consequently the matter was fixed for mention of 27/10/2022. The court has reflected.
7. The court is invited to exercise discretionary jurisdiction. Exercise of this discretion is guided by clear principles. The Court of Appeal of East Africa outlined the one of the principles in *Shah V Mbogo & Another* (1967) E.A 1116 in the following words;

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise to obstruct or delay the course of justice”
8. In the application under consideration, the defendant has explained that their non-attendance was due to the fact that the advocates abandoned their case without informing them. They contend that they were not aware of the hearing. The above explanation has not been controverted.
9. In the circumstances, the court takes the view that justice will be served if trial is reopened and the defendant is granted the opportunity to cross-examine the plaintiff's witness and to lead evidence. The defendant will, however, pay the plaintiff throw-away costs of the ex-parte proceedings and of the application, together assessed at Kshs 30,000/=.
10. In the end, the two applications dated 3/10/2022 and 22/10/2022 are disposed as follows:
 - a. The application dated 3/10/2022 is struck out for being incompetent.
 - b. Trial is reopened on condition that the defendant shall pay the plaintiff throw-away costs of Kshs 30,000 before the next hearing date in default, the order re-opening trial shall stand vacated.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 29TH DAY OF JANUARY 2024

B M EBOSO

JUDGE

In the presence of:

.....for the Plaintiff



.....for the defendant

Court Assistant: Osodo

