

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 93 OF 2015 (OS)

FRANCIS KAAI M'RINTUARA.....1ST PLAINTIFF

FRANKLINE MURITHI KAAI.....2ND PLAINTIFF

VERSUS

SAMSON MWORIA RUKWARU.....DEFENDANT

RULING

1. On 27.7.2016, interlocutory judgment was entered against the defendant and the matter was to proceed for formal proof. Thereafter, defendant filed an application to set aside the said judgment and on 18.4.2018, this court delivered a ruling containing the following orders:

(i) **The interlocutory judgment entered herein and all consequential orders are hereby set aside.**

(ii) **The applicant is granted leave, 14 days to file and serve his memorandum of appearance and response to the Originating summons.**

(iii) **Respondent is condemned to pay costs of this application.**

2. It appears that these orders were not complied with by defendant. The memorandum of appearance and the response to the Originating Summons were filed on 5.9.2013, way beyond the time lines given by the court.

3. Defence side has advanced a claim that they were not served with the suit papers hence the inability to comply with the court's order. However defence side has not demonstrated that they were incapacitated to comply with the court's order due to lack of the suit papers.

4. Despite the foregoing, I note that the response was finally been filed as well as the memorandum of appearance. The duty of this court is to do substantive justice and not to be-labour on issues of procedure. The hallmark of the rules of natural justice are embodied in **the right to be heard**. In Halsbury's Laws of England Volume 1 paragraph 84, it was stated thus; "**Natural justice and fairness: Implicit in the concept of fair adjudication lies two cardinal principles, namely, that no man shall be a judge in his own cause (nemo iudex in causa sua), and that no man shall be condemned unheard (audi alteram partem).** These two principles, the rules of natural justice, must be observed by courts, tribunals, arbitrators and all persons and bodies having the duty to act judicially...". Further in paragraph 96, the author stated thus; "**Opportunity to be heard. A person or body determining a justiciable controversy between parties must give each party a fair opportunity to put his own case**".

5. In Meru ELC Petition 14 of 2017, Isiolo Stage view Enterprises versus Isiolo County Government and Others, I stated that "**The purpose of giving timelines of events is not geared towards locking out evidence. Further, it must be noted that documents filed outside the given timelines are not necessarily invalidated by non-compliance, unless there is an express order to that effect. The documents can be admitted by the court if a basis is laid for their admission..... Time standards help courts to closely manage and monitor the processing of cases from filing to conclusion..... The net effect of non-compliance with the set timelines is delay, creation of backlog, more acrimony and even confusion**".

6. Defence side is reminded that it is obligated to play its role with regard to achieving the overriding objective set out in **Section 1 A (1) of the civil procedure Act**, where it is provides that "**The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes**" and **Section 1 A (3)** where it is further provides that, "**A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court**".

7. Ultimately, the court has to strike a balance; on one hand, it will strive to give each side an opportunity to come to the seat of justice. On the other hand, such a party should comply with court's orders to facilitate the just and expeditious disposal of the suit. Considering that parties have filed documents in support of their case, the best way to handle the matter is to have it fixed for hearing. In the circumstances the memorandum of appearance and the replying affidavit are hereby deemed as properly filed. The suit is to be set down for hearing.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 17TH DAY OF OCTOBER, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet

Ashaba for plaintiffs

HON. LUCY. N. MBUGUA

ELC JUDGE