



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 118 OF 2015

SHEILA KABOLE MABWA.....PLAINTIFF

VERSUS

JOSHUA ANGE'I.....DEFENDANT

RULING

The plaintiff filed this suit on 21/9/2015 at Kitale High Court. The defendant filed a defence on 29/8/2016. On 17/1/2017 the plaintiff filed an application for an interim injunction and preservative orders to restrain the respondent and his agents from interfering with, constructing on or cultivating on or any other dealing over **LR. No. Trans-Nzoia/Kaisagat/247** pending the hearing of the application interpartes. The third prayer in the application sought that such injunction and preservative orders do remain in place till the hearing and determination of this case. On the same day the matter came up before the Deputy Registrar who gave directions that the matter be placed before the Hon. Judge at Eldoret on 18/1/2017 for his directions.

When the file was placed before him the Honourable Judge certified the application urgent and that it be served within three days for hearing on 31/1/2017.

On the 31/1/2017 when the matter came up before the court at Eldoret, the record shows that Mr. Analo appeared on behalf of the defendant/respondent while there was no representation for the applicant. Mr. Analo informed the court that the application dated 17/1/2017 was coming up for the hearing of a preliminary objection. The court dismissed the application for non-attendance.

Part of the court record shows that on the same day Mr. Mukabi for the applicant appeared before the court, on the 31/1/2017, having filed an application dated 31/1/2017 seeking to reinstate the application dated 17/1/2017 for hearing and determination. Annexed thereto is a supporting affidavit sworn by James Oyundi Mukabi.

The affidavit details the circumstances that occasioned his being late in court. He states that his lateness was due to traffic and distance from Vihiga County where he was travelling from on the material day. He states that on the material day he had left Vihiga prepared for the hearing of the application before the court at Eldoret. While arguing the application dated 31/1/2017 Mukabi submitted before this court that **Article 159(2) (b)** stated that justice shall be administered without undue regard to technicalities. He submitted that it would be prudent that the application dated 17/1/2017 was dealt with on the merits.

The respondent filed grounds of opposition stating that the application dated 31/1/2017 is “belated, untimely and a mere afterthought” (sic) and should not be allowed. The respondent also states in his

second ground that the application is a “clear abuse of court process” and it should be dismissed with costs.

Having looked at the record, I find no evidence that the application dated 31/1/2017 is an afterthought or an abuse of court process as claimed. The application dated 17/1/2017 was scheduled for hearing before the court at Eldoret on 31/1/2017. Counsel for the applicant has demonstrated that not only did he travel to Eldoret on the material date but also that he, upon finding the application dated 17/1/2017 had been dismissed for non-attendance, filed the current application on 31/1/2017, that is, on the same date of dismissal. The filing of that application cannot be considered an afterthought or an abuse of the court process. It can also not be considered as belated as the respondent suggests for the reason that not even one full day elapsed from the time of dismissal of the application dated 17/1/2017 before the filing of the application currently being considered.

The applicant has reasonable explained the delay in coming to court on 31/1/2017 in the affidavit sworn by James Oyundi Mukabi in support of the application at hand.

For the above reasons, I will exercise my discretion in favour of the applicant in this application. I therefore grant prayer No. (a) in the application dated 31/1/2017 and order that the application dated 17/1/2017 be fixed for hearing. Costs will be in the cause.

Dated, signed and delivered at Kitale on this **14th** day of **February, 2017**.

M. NJOROGE

JUDGE

In the presence of:

Mr. Analo for the Respondent

N/A for the Applicant

Court Assistant – Isabellah

M. NJOROGE

JUDGE

14/2/2017