



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NO. 455 of 2009

TRUST LAND DEVELOPERS LIMITED.....PLAINTIFF

=VERSUS=

KENYA AGRICULTURAL RESEARCH INSTITUTE.....1ST DEFENDANT

KENYA VETERINARY VACCINES

PRODUCTION INSTITUTE.....2ND DEFENDANT

THE LANDS REGISTRAR.....3RD DEFENDANT

THE COMMISSIONER OF LAND.....4TH DEFENDANT

RULING

1. When this matter came up for hearing on 3rd April 2017, Mrs Mbabu for the second defendant raised two issues which she wanted addressed before the hearing could proceed. The first issue was that the Plaintiff had not complied with the directions of the Court given on 17th May 2016. The second issue was that the firm of *Sagana, Biriq & Co. Advocates* were not properly on record as at 6th June 2016, when they filed a list of witnesses and documents.

2. On 17th May 2016, the Court directed that the plaintiff was to file its bundle of documents and witness statements within 21 days, failing which, the plaint was to stand struck out. Mrs Mbabu argued that the bundle of documents by the Plaintiff was filed on 23rd September 2016 and that when the firm of *Sagana Biriq & Co Advocates* filed the plaintiff's list of documents and list of witnesses on 6th June 2016, they were not properly on record. This is because the Notice of change indicated that the advocates were taking over from the firm of Muriungi & Co. Advocates when the true position was that the Advocates then on record were ***Messers Makumi Mwangi & Wang'ondu Advocates.***

3. Mr Anyega in response conceded that indeed there was a mistake in the Notice of change filed on 20th may 2016. That after the mistake was noted, they rectified the same by filing a proper Notice of change on 7th June 2016, taking over the conduct of the Plaintiff's case from *Messers Makumi, Mwangi & Wang'ondu Advocates.* On the issue of documents and witness statements, he contended that the same were filed within 21 days given by the Court.

4. Mrs Mbabu argued that there was no need of proceeding with the Plaintiff's case which stood struck

out for non-compliance of the court's directions of 17th May 2016, and that what remained to be heard was the second defendant's counter-claim.

5. I perused the court record and confirm that Justice Okong'o gave directions to the Plaintiff to file its bundle of documents and witness statements within 21 days from 17th May 2016, failing which the Plaintiff was to stand struck out. The record shows that the firm of *Sagana Biroq & Co. Advocates* filed a notice of change of advocates on 26th May 2016, and filed list of documents and list of witnesses on 6th June 2016. The firm had to file a proper notice of change a day after the filing of list of documents and list of witnesses.

6. When the advocates for the parties appeared before justice Okong'o on 15th December 2016, Mrs Mbabu was represented by Mr Karanja . All the advocates present confirmed that there had been compliance and a date for hearing was given. Though the Plaintiff did not file a bundle of documents and witness statement, within the 21 days given, the plaintiff at least filed a list of witnesses and a list of documents it intended to rely on. Whether the bundle of documents and witness statements were filed subsequently does not really matter and does not prejudice the second defendant in any manner. If the second defendant was keen on the strict compliance of the orders, they should have raised the matter on 15th December 2016. The confusion on notice of change was rectified on 7th June 2016. It does not mean that when the advocates filed a wrong notice the previous day, what they had filed should be disregarded. I do not find any merit in the issues raised. This is an old case which should not have been adjourned on the grounds raised. In the spirit of expeditious disposal of the old cases. I deem all documents which were not filed in accordance with the directions of the Court to have been properly filed. The parties herein should fix this case for hearing on priority basis.

It is so ordered.

Dated, Signed and Delivered at *Nairobi on 31st* this day of *July, 2017*

E.O .OBAGA

JUDGE

In the Presence of :-

Mr Angaya for 1st defendants

Mr Ondieki for Plaintiff

Mr Kamau for 3rd and 4th defendants

Court Assistant: Hilda

E.O.OBAGA

JUDGE