



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO 175 OF 2002**

**JOSEPH MUTUA MBUVA .....PLAINTIFF**

**VERSUS**

**WAICHAKEHIRI FARMERS SOCIETY LTD (Sued through**

**Chairman ROBERT KIMATHI MARETE.....DEFENDANT**

**R U L I N G**

This matter was coming up for hearing but is destined for adjournment.

An issue has arisen as to whether defendant should be paid costs of adjournment in view of the fact that Plaintiff's side is not ready with a certain document ( an agreement).

This Court is a Court of justice as well as a Court of record. As such, this Court has to peruse the Courts record to arrive at a decision.

I find that on 18.05.15 Plaintiff's case was in progress but the matter was adjourned as it emerged that some documents had not been exchanged. The Court's orders of 18.5.15 were that:-

***"Between now and next hearing date, parties are allowed to put in witness statements and apposite documents with the defendant doing so within 14 days and Plaintiff doing so within 14 days after service----"***

On 15.03.16, Plaintiff counsel stated that they could not proceed because they had just been served with a bundle of documents.

***"The Court again granted Plaintiff's side leave to file further documents and to serve defendants advocates."***

The matter was mentioned before the Judge on 16.5.17 and 24.05.17 and the Plaintiffs did not raise the issue of non compliance with the previous Court's orders. They didn't inform the Court whether they were encountering any peculiar difficulties in the process of compliance.

Plaintiff's Counsel has now purported to show the Court the documents that they intend to rely on. Some are indeed original documents However, the Plaintiff has not complied with the orders of the Court given on 18.05.15 and on 15.03.16.

This being a very old matter, the Plaintiff's side ought to have been vigilant in ensuring that the case is expedited.

In exercise of the Judicial Authority, Courts are supposed to ensure that "Justice is not delayed" See Article 159 2(b) of the Constitution.

I also make reference to provision of Section 1 A (3) of the Civil Procedure Act to the effect that.

***"a pray 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 process of the Court and to comply with the directions and orders of the Court".***

See case of *In Hunker Trading Company Limited Versus Elf Oil Kenya Ltd Civil application No. 69 of 2010 Nairobi*, the issue of good management of Court cases, was dealt with.

It therefore follows that a party who fails to comply with Court's orders is bound to be penalised in one way or the other. The Court can decline to accept the documents altogether as they have not been filed pursuant to a Court order. see the case of *Johana Kipkemei Too Versus Hellen Tim EL No. 975/12 NBI (Munyao J)*.

In the instant case, the Court is willing to give the Plaintiff's side an opportunity to comply with orders of 18.5.15 and, 15.3.16 . The defence witnesses are in Court and they were expecting the trial to go on. The Principle of Fairness is anchored under article 50(1) of the Constitution. The Court should give due Consideration to "**Every Person**" who appears before the Court and not just one side.

In the circumstances I proceed to give directions as follows;

- (1) The matter is adjourned for the Plaintiff to file and serve their list of documents and list of statements of witnesses in a paginated bundle within 30 days from today.
- (2) Plaintiff's side is condemned to pay Court Adjournment fees as well as defence advocates costs for today assessed at Ksh. 3000 and for the two defence witnesses Ksh. 1000 making a total of Ksh. 4000 (Excluding CAF).
- (3) The Cost are to be paid before the next hearing day.
- (4) Case to be heard on 6.11.17 before Judge Cheronu.

**DELIVERED, DATED AND SIGNED AT MERU THIS 19TH DAY OF JULY, 2017 IN THE PRESENCE OF:-**

C.A Janet

E.Mwangi for Defendant

Muthamia for Plaintiff

**HON. L. N. MBUGUA**

**ELC JUDGE**