



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 91 OF 2017

M'NDUBI M'NDAKA.....PLAINTIFF

VERSUS

EUSTACE M'MIRITI..... DEFENDANT

RULING

1. This suit was filed on 7th February, 2005 about 12 years and 8 months ago. The record shows that the plaintiff appeared before the court one year and five months later on 18th July, 2006.
2. A perusal of the court file shows that what followed were adjournments galore. I note that I got seized of this matter on 5th December, 2012. On that day, the court was told that advocate Mwanzia, for the defendant, was not ready to have the case heard as he had rushed a sick relative to Nairobi. The parties were given time to comply with order 11 of the Civil Procedure Rules and to come back to court for directions on 29th January, 2013.
3. On 29th July, 2013, advocate Ogoti holding brief for advocate Anampiu for the plaintiff informed the court that the parties had complied with order 11, CPR. This position was countered by advocate Muthomi, holding brief for advocate Mwanzia. At their request the parties were granted 14 days to comply with order 11, CPR.
4. The matter was to be mentioned on 18th March, 2013. For whatever reason the mention for directions slated for 18th March, 2013 did not take place. By consent, the parties obtained a mention date from the registry. The matter was to be mentioned on 22nd July, 2013. Surprisingly, although the date had been obtained by consent of both parties, they both failed to come to court.
5. On 11th November, 2014, advocate Mwanzia, for the defendant, informed the court that the parties had only partially complied with Order 11, CPR. He asked the court to give the parties two weeks to fully comply with Order 11, CPR. Advocate Leekona holding brief for advocate Anampiu for the plaintiff supported this prayer. The prayer was granted. The parties were required to come back to court for directions on 27th November, 2014. On that day advocate Muthomi holding brief for advocate Anampiu, for the plaintiff sought 21 days to fully comply with order 11, CPR.
6. The parties came back to court on 11th May, 2015. Mr.Mwanzia, for the defendant, told the court that the parties had fully complied with order 11, CPR. This assertion was promptly controverted by Mr. Ndubi who was holding brief for Mr. Anampiu for the plaintiff. He told the court that the plaintiff had been directed to file his case summary. He went on to tell the court that the plaintiff had not done so. He told the court that Order 11, CPR having not been fully complied, the suit was not ripe for hearing. He sought 7 days to fully comply. One notes that this was the plaintiff's advocate seeking to justify delay of

the hearing of the suit by using his indolence as the reason for the adjournment he sought. The court gave the plaintiff 7 days to fully comply with order 11, CPR. The parties were directed to come back to court on 16th June, 2015.

7. On 16th June, 2015, the plaintiff's advocate told the court the parties had not complied. This, despite the fact that the parties had on 11th May, 2015 requested the court to give them 7 days to fully comply with Order 11, CPR. Advocate Mutunga holding brief for advocate Mwanzia for the defendant, informed the court that the parties had not fully complied. He asked the court to grant them 60 days to fully comply. His prayer was supported by advocate Anampiu, the plaintiff's advocate.

8. The court granted 60 days for the parties to fully comply with Order 11 CPR. The matter was stood over generally and the parties, once they achieved compliance, were directed to obtain a mutually convenient date for directions from the registry.

9. The 16th of September, 2015 was the date obtained by the parties for directions. On this day advocate Kirimi Mbogo, holding brief for advocate Mwanzia for the defendant informed the court that the parties had fully complied with Order 11, CPR. He asked the court to grant the parties a hearing date. Advocate Mutuma, holding brief for Mr. Mwanzia for the defendant, concurred. The 7th of October, 2015 was the date fixed for hearing of the suit. Both parties were represented in court when this hearing date was fixed.

10. On 7th October, 2015, the parties and their advocates were not in court. Precious judicial time was wasted.

11. On 13th July, 2016, the parties came back to court. They asked the court to give the matter a hearing date. Mr. Anampiu, the plaintiff's advocate told the court that he was ready to proceed with the hearing. However, advocate Miss Nyaga, holding brief for Mr. Mwanzia for the defendant, told the court that Mr. Mwanzia was seeking an adjournment as he was engaged elsewhere. No other explanation for Mr. Mwanzia's absence was given.

12. Mr. Anampiu, the plaintiff's advocate, prayed for cost for himself and for 2 witnesses which the court granted at the assessed amount of Kshs.5,000/=. The court frowned at the plaintiff's advocate's conduct and also deprecated the unnecessary waste of precious judicial time arising thereof. The court fixed the 29th of July, 2016 as the suit's next hearing date.

13. For reasons not fathomable from the court file, hearing did not take place on 29th July, 2016.

14. On 13th February, 2017 notice was given for parties to come to court for directions on 15th March, 2017. By this time the file relating to this suit had been transferred from Meru to Chuka where an Environment and Land Court had been established.

15. In the morning of 15th March, 2017, advocate Miss Njenga, holding brief for Mr. Mwanzia for the defendant, asked the court to fix a hearing date for the suit. As the plaintiff and his advocate were not in court, despite the fact that they were aware of this mention date for directions having been properly given notice by the court, Miss Njenga undertook to serve the hearing date upon the plaintiff.

16. On 3rd April, 2017, advocate Miss Njenga holding brief for advocate Mwanzia for the defendant, informed the court that he had only served advocate Anampiu, the plaintiff's advocate that morning. She proffered that advocate Anampiu had received the apposite hearing notice under protest. She wished to leave the issue of how the matter should be moved forward to the court.

17. The plaintiff told the court that he was in court and that his advocate was on his way to the court. He asked that the suit be allocated time for hearing. At this point, Miss Njenga changed tack. She told the court that she was not ready to proceed with the hearing of the suit. The reason she proffered was that advocate Mwanzia was the one seized of the personal conduct of the case. The court fixed a new hearing date. The court directed the parties to come to court for the hearing of the case on 11th July, 2017.

18. In the morning of 11th July, 2017, both advocates representing the parties were not in court. Both the plaintiff and the defendant, however, indicated that they were ready to proceed with the hearing of the case. Hearing of the suit was allocated time at 11.00am.

19. At 11.00am when hearing of the suit was to commence both advocates representing the parties turned up. The defendant's advocate, Mr. Mwanzia, told the court that he had another hearing before the Hon. Justice Limo in the High Court and further told the court that he had agreed with Mr. Anampiu, the plaintiff's advocate, to have the hearing of the suit take place on 25th September, 2017. Mr. Anampiu told the court that they had agreed to have the hearing of the suit take place on 25th September, 2017. They agreed upon this date by their own consent. The court obliged them. Hearing of the suit was fixed to take place on 25th September, 2017.

20. Wonder of wonders. For the umpteenth time parties ensured that hearing as fixed by the consent of parties did not take place. The litigants' advocates did not turn up. When the suit was called on outside the court neither the plaintiff nor the defendant was in court.

21. I do opine that the way this suit has been conducted by the litigants would constitute a veritably classic case of how to procrastinate cases. It seems to me that the two parties have colluded and contrived effective means of adjourning hearings. Indeed the shenanigans that can be gleaned from the way this suit has been conducted can form a valuable chapter in a tome that can be called; "Tips on how to successfully and inordinately procrastinate hearing and determination of suits." Indeed, I dare opine that judges who have handled this matter since it was filed in 2005 can be accused of having been too lenient on the parties. This indictment may not escape this judge himself. But choices have consequences.

22. Order 12 subrule 1 of the Civil Procedure Rules decrees as follows: "If on the day fixed for hearing, after the suit has been called on for hearing outside the court, neither party attends, the court may dismiss the suit."

23. This suit has been called on for hearing outside the court and neither party attended the hearing slated for 25th September, 2017.

24. The consequence is that I find that this suit merits dismissal.

25. This suit is dismissed.

26. Costs except those that may have been granted before this dismissal of this suit are not awarded to any of the two parties.

27. It is so ordered.

Delivered in open court at Chuka this 25th day of September, 2017 in the presence of:

CA: Ndegwa
Parties not present

P. M. NJOROGÉ

JUDGE