



**Teclemariam v Andemariam (Environment & Land Case  
20 of 2022) [2024] KEELC 919 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 919 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 20 OF 2022  
LN MBUGUA, J  
FEBRUARY 22, 2024**

**BETWEEN**

**TIBLESTE TECLEMARIAM ..... PLAINTIFF**

**AND**

**HIDAT TECLE ANDEMARIAM ..... DEFENDANT**

**RULING**

1. On 7.6.2023, this court gave directions for the plaintiff to serve summons to enter appearance by 7.7.2023, failure to which the matter would stand as abated. The court then gave a mention date for pre-trial directions on 21.9.2023. Come the date of 21.9.2023 and it was a no show for the plaintiff, but defence counsel was present. The suit was marked as abated.
2. The plaintiff has now filed an application dated 1.11.2023 seeking orders to stay the orders given on 21.9.2023, review the said orders and reinstate the suit. It is argued that the defence counsel lied to the court as summons had duly been taken out and served.
3. The application at hand is opposed via grounds of opposition dated 5.12.2023, where it is averred that service was not effected in tandem with the court's orders of 7.6.2023 and that the application was not filed timeously.
4. I have considered the rival arguments including the submissions of the plaintiff dated 26.12.2023. It is noted that the defendant did not file any submissions. The sole issue falling for determination is whether the suit which was marked as abated should be revived. The plaintiff has rightly submitted that a court has jurisdiction to revive an abated suit if sufficient cause is proffered. The question is: Has the plaintiff demonstrated that there are sufficient reasons to warrant the revival of the suit.
5. The plaintiff contends that indeed service of summons were effected. The onus was therefore upon the plaintiff to demonstrate that the orders of the court on service of summons had been served. I have combed through the digital file in the CTS portal as well as the physical file and I have not come



across any Affidavit of service filed in relation to service of summons by the date of 21.9.2023 or even thereafter upto date. The only affidavit of service filed by the plaintiff in the portal after the orders of 7.6.2023 were given is the one filed on 5.11.2023 and the same relates to the service of the current application.

6. It is pertinent to take cognizance of the background against which the orders of 7.6.2023 were given. The suit was filed way back in September 2022. Almost a year down the line, the parties focused on prosecution of various applications. Efforts to resolve the dispute via mediation had collapsed. It was therefore crucial for the court to steer the matter into the direction of the prosecution of the main suit through application of Active Case Management techniques. This entailed giving directions on 7.6.2023, in respect of the prosecution of an application as well as directions on pretrial. What more, the court gave a self executing order whose import was that the plaintiff was put on notice that none compliance would attract sanctions. The case of *Ace Engineering & Building Co. Ltd v National Bank of Kenya LTD* [2019] eKLR shows that self executing orders are given by the courts in order to meet time standards. Also see the Supreme Court Decision in *Vulcan Lab Equipment Ltd v Ethics and Anti Corruption Commission & another* (Application E012 of 2021) [2023] KESC 70 (KLR) (Civ) (8 September 2023) (Ruling) relating to issues of compliance.
7. Another notable aspect of the matter is that the plaintiff's counsel has not given any explanation as to why they were missing in action on 21.9.2023, the date the matter was scheduled for confirmation of compliance with courts orders of 7.6.2023.
8. It is also notable that the current application was brought forth in November 2023. The delay in filing the current application has not been proffered.
9. In the case of *Moschion v Mwangi* (Environment & Land Case 350 of 2018) [2023] KEELC 17144 (KLR) (27 April 2023) (Ruling) Neutral citation: [2023] KEELC 17144 (KLR), this court dismissed the suit on the basis of none compliance with court's directions where I stated thus;

“The right to be heard is sacrosanct and is embodied in the latin maxim “audi alteram partem”. However, a party is only entitled to reasonable opportunity to be heard”.
10. Similarly in the case at hand, I find no sufficient reasons to warrant the reinstatement of the suit. The application dated 1.11.2023 is hereby dismissed with costs to the defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Momanyi for Plaintiff

M/s Muturi holding brief for Mohamed for Defendant

Court assistant: Eddel

