



**International Pentecostal Hollines & 6 others v Star-Land Company Ltd & 2 others
(Environment & Land Case 594 of 2012) [2024] KEELC 790 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 594 OF 2012
EO OBAGA, J
FEBRUARY 15, 2024**

BETWEEN

**INTERNATIONAL PENTECOSTAL HOLLINES 1ST PLAINTIFF
SIMON NYABERA 2ND PLAINTIFF
EZEKIEL KEARI GIDEON 3RD PLAINTIFF
ISAIH M. MOGUTHEARORI 4TH PLAINTIFF
MOSES PETER OKERIO 5TH PLAINTIFF
KENNETH CHESEREK SANG 6TH PLAINTIFF
CHALES MWALIMU OKERIO 7TH PLAINTIFF**

AND

**STAR-LAND COMPANY LTD 1ST DEFENDANT
GREENVILLIE PLANTATIONS LIMITED 2ND DEFENDANT
PANCRAS OYATSI 3RD DEFENDANT**

RULING

1. This is a ruling in respect of a Notice of motion dated 23.11.2023 in which the 1st Defendant/Applicant seeks to set aside this court’s orders of 23.11.2023. The Applicant contends that on the material day, he and his counsel were ready to proceed with defence hearing. The Applicant’s counsel logged in to the court’s virtual session and inquired about this case. The court then informed him that the file was not among those which were to proceed on 23.11.2023.
2. The court however indicated to parties that the file was going to be traced and if it turned out that it was slated for hearing, it would proceed. The Applicant’s counsel depones that when he inquired



about the file later on from the Court Assistant, he was informed that the Applicant's case had been closed without being heard. The Applicant therefore prays that the order of 23.11.2023 closing his defence without being heard should be set aside and defence be allowed to proceed.

3. The Applicant's application was opposed by the Plaintiff/Respondents based on a replying affidavit sworn on 5.12.2023. The deponent of the replying affidavit contends that on 23.11.2023, he was in the chambers of his Advocate who was mentioning another matter virtually. The counsel then inquired about this particular matter and the court informed him that the file was not among those which the court was dealing with. The court however promised parties that the file was going to be traced and the court was going to proceed with the hearing.
4. After the file was traced, it was mentioned virtually and was allocated time for hearing in open court at 11.00a.m. Counsel for the Respondents called Mr. Momanyi three times but he could neither pick his call nor return any call. When the court was informed about Mr. Momanyi's absence and given the fact that an indication had been given that the matter was to proceed once the file was traced, the court closed the Applicant's defence and directed that parties file written submissions.
5. The Respondents contend that Mr. Momanyi's failure to pick calls was deliberate and that his conduct was out to delay the finalization of this case. The Respondents pray that the Applicant's application be dismissed with costs.
6. It is only the Applicant who opted to file written submissions. I have carefully considered the Applicant's application, the opposition to the same by the Respondents as well as the Applicant's submissions. The only issue for determination in this application is whether the Applicant has made a case for the exercise of this court's discretion in its favour.
7. There is no doubt that this matter was initially before ELC 2. The court recused itself on ground of being related to the 3rd Defendant. This is what caused confusion as the file was mistakenly taken to ELC 2 on 23.11.2023. I can confirm that indeed when I was going through mentions virtually, I told counsel for parties that I did not have the file. I however informed the parties that if the file was traced, we were to proceed with hearing.
8. When this file was traced, I directed that hearing do proceed at 11.00a.m. Mr. Angu tried to reach Mr. Momanyi but he could not pick calls. He has not even bothered to say why he could not pick a colleague's call or return it. However, this notwithstanding, it is a constitutional right of a party to be heard.
9. In *Murai v Wainaina* [1982] KLR 38 it was held as follows:-

“A mistake is a mistake. It is no less a mistake because it is unfortunate slip. It is no less pardonable because it is committed by Senior Counsel. Though in the case of junior counsel the court might feel compassionate more readily. A blunder on a point of law can be a mistake. The door of justice is not closed because a mistake has been made by a lawyer of experience who ought to know better. The court may not condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate. It is known that courts of justice themselves make mistakes which are politely referred to as erring in their interpretation of laws and adoption of a legal point of view which courts of appeal sometimes overrule.”



10. Further in the case of Philip Chemwolo & another v Augustine Kubende [1982 – 1988] KAR 1030, it was held as follows:-

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case heard on merit. I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court as is often said exists for the purpose of deciding the rights of the parties and not the purpose of imposing discipline.”

11. Though I am not entirely convinced that Mr. Momanyi’s conduct was innocent, I am prepared to give him benefit of doubt. I therefore allow the application by the Applicant with the result that the order of 23.11.2023 closing the Applicant’s case is hereby set aside. The 1st Defendant shall pay costs of Kshs 10,000/= to Mr. Angu Advocate before the next hearing date.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET on this 15th day of FEBRUARY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Momanyi for Applicant.

Court Assistant -Laban

E. O. OBAGA

JUDGE

15TH FEBRUARY, 2024

