



REPUBLIC OF KENYA



KENYA LAW
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Kigeche & 4 others v Karura Farmers Company & 8 others (Environment & Land Case 3017 of 1990) [2024] KEELC 3749 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3749 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 3017 OF 1990**

**LN MBUGUA, J
APRIL 24, 2024**

BETWEEN

**DAVID MBAGU KIGECHÉ 1ST PLAINTIFF
JAMES MUGO WAWERU 2ND PLAINTIFF
KARUTHI KARANJA 3RD PLAINTIFF
HANNAH NYAMBURA MBAGU 4TH PLAINTIFF
HENRY WAINAINA KARIUKI 5TH PLAINTIFF**

AND

**KARURA FARMERS COMPANY 1ST DEFENDANT
SAMUEL KUNGU 2ND DEFENDANT
FESTUS KADENGE 3RD DEFENDANT
GRACE GATHURI 4TH DEFENDANT
PETER MUGO MBATHIA 5TH DEFENDANT
PETER MARERI 6TH DEFENDANT
FLORENCE WANGUI 7TH DEFENDANT
BENJAMIN MAHINGI 8TH DEFENDANT
PETER MUNGAI 9TH DEFENDANT**

RULING

1. The plaintiff's case proceeded for hearing on 10.5.2023 in absence of the 2nd and 9th defendants. The aforementioned defendants then filed an application dated 11.5. 2023 seeking orders to set aside the



said proceedings, in order to be allowed to cross examine the witnesses of the plaintiff and to tender their defense case.

2. In a ruling delivered on 19.10.2023 the court allowed the aforementioned application with a rider that the applicants (read 2nd & 9th defendants) were to pay Kshs.120,000 within 30 days to the plaintiffs as throw away costs, and in the event of none compliance, the court was to proceed to give directions on delivery of the judgment.
3. The 2nd and 9th defendants are back in court with an application dated 24.1.2024 seeking a stay of the proceedings herein pending the hearing and determination of an intended appeal in respect of the ruling delivered on 19.10.2023. They argue that they are aggrieved with the said ruling particularly in respect to the throw away costs of kshs.120,000 which were to be paid within 30 days.
4. The 1st, 3rd, 4th and 5th plaintiffs opposed the application vide the replying affidavit sworn on 2.2.2024 by Karuthi Karanja (3rd plaintiff). They contend that the court is being asked to sit on appeal in respect of its own orders and that in any event, the intended appeal does not operate as a stay of the proceedings herein.
5. The 2nd plaintiff has also opposed the application vide her replying affidavit shown on 24.2.2024. She contends that this court is functus officio in respect of the ruling in question, adding that when the court delivered the said ruling, it did point out that this is a very old case having been in court for 33 years.
6. I have considered all the issues raised herein. When the application dated 24.1.2024 was presented before me on the same date of 24.1.2024, the court gave the following orders;
 - i. That The application and today's directions be served by 31.1.2024.
 - ii. That the respondents shall file and serve their responses by 14.2.2024.
 - iii. That the applicants shall file and serve their written submissions and any further affidavit by 21.2.2024.
 - ii. That the respondents shall file and serve their written submissions by 28.2.2024.
 - ii. That documents filed or served outside the given timelines shall stand as expunged.
 - ii. That parties are directed to file their affidavits of services in the CTS.
 - ii. Ruling shall be on 18.4.2024".
7. A perusal of the file in the digital platform reveals that no affidavits of services were ever filed by the applicant in accordance with the above directions. In that regard all the applicants' documents stand as expunged.
8. However, even if this court was to consider the application on its merits, the fact of the matter is that the applicants have no right of audience to a hearing before this court in view of the ruling delivered on 19.10.2023 which contained self executing orders. This is because the condition set by the court in the said ruling was that the applicants were to pay the throw away cost of Ksh 120 000 within 30 days from the date of the said ruling and in the event of none compliance, the court was to give directions on the delivery of the judgment.



9. It follows that after 19.11.2023 the applicants lost their rights to defend the suit, Thus the applicants drove themselves away from the seat of justice See: *Moschion v Mwangi* (Environment & Land case 350 of 2018) (2023) KEELC 17144 (KLR) (27 April 2023 (Ruling)).
10. In the circumstances, I find that the application dated 24.1.2024 is not merited, the same is hereby dismissed with costs to the plaintiffs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Matwone for 1st, 3rd, 4th and 5th Plaintiffs

Jane Okoth for 2nd Plaintiff

Manyara for 2nd & 9th Defendants Applicants

Court assistant: Eddel

