



Odote v Aggarwal t/a Farm & Transport Technical Services & 3 others (Environment & Land Case 172 of 2015) [2024] KEELC 4365 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4365 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 172 OF 2015**

**E ASATI, J
MAY 30, 2024**

BETWEEN

MICHAEL KOJIEM ODOTTE PLAINTIFF

AND

ATIN KUMAR AGGARWAL T/A FARM & TRANSPORT TECHNICAL SERVICES 1ST DEFENDANT

GAURI MEHTA 2ND DEFENDANT

DISTRICT LAND REGISTRAR, KISUMU 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. This ruling is in respect of the Plaintiff’s Notice of Motion application dated 20th December 2023 seeking for orders that the court do review, vary and set aside the proceedings of 17th October 2023 and consequential order directing that the ruling on the application dated 12th September 2023 be delivered on 25th January 2024 and do permit the Plaintiff /Respondent a chance to respond to the application dated 12/9/2023. The application also sought for an order that the court be pleased to deem the plaintiff ‘s Replying Affidavit dated 17th October 2023 and grounds of opposition of the same date and submissions in response to the 1st and 2nd Defendants’ application dated 12/9/2023 to be regularly filed.
2. The grounds upon which the application was brought are that Counsel for the Plaintiff through inadvertence on his part failed to diarize the date of 17th October 2023 which was the date given by court. That as a consequence the court proceeded to give a date for ruling on the application dated 12/9/2023. That failure to respond to the application dated 12/9/2023 and to attend court on 17/10/2023 cannot be blamed on the plaintiff. That the application was brought in good faith and without inordinate delay.



3. The application was supported by the averments in the Supporting Affidavit sworn by Robert Ouma Njoga Advocate on 20/12/2023. Attached to the Supporting Affidavit was a letter dated 17/10/2023 from the applicant's advocates to the Respondents' advocates seeking indulgence from the defendants' advocates to be able to file their documents. Also attached was a copy of the plaintiff's advocates' diary for 17/10/2023.
4. The application was opposed by the 1st and 2nd Defendants vide the Replying Affidavit sworn on 12th January, 2024. The 1st and 2nd Defendants' case is that the application does not meet the threshold for review under Order 45 of the *Civil Procedure Rules*, that there was a delay of 45 days which was not explained and that there is nothing to show that the document annexed to the Supporting Affidavit is a diary belonging to the plaintiff's advocates.
5. I have considered the application and the Replying Affidavit. What the Applicant seeks is to have his documents already filed albeit late, deemed as properly filed. The documents are in response to the 1st and 2nd Respondents' application dated 12/9/2023. The applicant has explained the failure to file the documents in time and non-attendance on 17/10/2023. It is in the interest of justice that the application be allowed so as to accord the applicant a change to respond to the application by the 1st and 2nd Defendants dated 12/9/2023. I find that the application has merit and allow it as follow: -
 - i. The proceedings of 17/10/2023 are hereby set aside.
 - ii. The Replying Affidavit, grounds of opposition and submissions filed by the plaintiff in response to the application dated 12th September, 2023 are hereby deemed as properly filed.
 - iii. Costs to the 1st and 2nd Defendants.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 30TH DAY OF MAY, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of

Maureen - Court Assistant

T. Oduor for the Plaintiff/Applicant.

Siwolo for the 1st & 2nd Defendants/Respondents.

Masaka for the 3rd and 4th Defendants/Respondents.

