



REPUBLIC OF KENYA



**Approtek Limited v Ngotho & 2 others (Environment & Land Case
36 of 2023) [2024] KEELC 4294 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4294 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 36 OF 2023**

YM ANGIMA, J

MAY 16, 2024

BETWEEN

APPROTEK LIMITED PLAINTIFF

AND

THOMAS NJENGA NGOTHO 1ST DEFENDANT

SAMUEL WACHIRA MUGO 2ND DEFENDANT

COUNTY GOVERNMENT OF NYANDARUA 3RD DEFENDANT

RULING

1. Vide a notice of motion dated 04.03.2024 brought under order 7 rule 5 of the *Civil Procedure Rules*, 2010, Section 3A of the *Civil Procedure Act* (Cap.21) and all other enabling provisions of the law, the 1st and 2nd Defendants sought leave to file further documents and a supplementary bundle of documents.
2. The application was based upon the grounds set out in the body of the motion and the contents of the supporting affidavits sworn by the 1st and 2nd Defendants and the annexures thereto. It was contended that they had inadvertently failed to include some crucial defence documents while filing their defence and list of documents. It was further contended that it was necessary to have the said documents introduced for a full and effectual resolution of the matters in dispute in the suit.
3. The Plaintiff filed grounds of opposition dated 08.03.2024 in opposition to the application. The Plaintiff stated that the application was a belated afterthought and that it shall suffer prejudice if the application was allowed since it had already closed its case. It was contended that the 1st and 2nd Defendants had not made out a case for the grant of the orders sought hence the court was urged to dismiss the application with costs.
4. When the application was listed for directions, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file



and exchange their respective submissions. The record shows that the 1st and 2nd Defendants filed their submissions on 11.05.2024 whereas the Plaintiff's submissions were also filed on the same date.

5. The court has considered the notice of motion dated 04.03.2024, the grounds of opposition thereto, submissions as well as the material on record. The court is of the view that the singular issue for determination herein is whether or not the 1st and 2nd Defendants have made out a case for grant of leave and the consequential orders sought.
6. The court is aware that it has discretionary power to grant or refuse the leave sought by the 1st and 2nd Defendants to file their defence documents out of time. However, such discretion, like all judicial discretion should be exercised judiciously and upon reason. The only reason which was given by the 1st and 2nd Defendants for their failure to include all their defence documents in their trial bundle was inadvertence.
7. The Plaintiff did not file any affidavit to discount or dispute the reason given by the 1st and 2nd Defendants for their default. The Plaintiff's main point of opposition is that it has already closed its case hence it shall not have an opportunity to discount or comment upon the documents sought to be introduced. The court is of the opinion that the Plaintiff's apprehension of prejudice can be cured through cross-examination of the defence witnesses and through being accorded an opportunity to tender additional documents and/or evidence.
8. Since the trial has not yet been concluded, the court is of the opinion that the 1st and 2nd Defendants should be accorded an opportunity to fully ventilate their defence to the action in the interest of justice. It would be unjust to shut out the 1st and 2nd Defendants from fully ventilating their defence on account of inadvertence. The Plaintiff shall, however, be granted leave to produce additional documents and evidence, if need be. It is interesting to note that in its grounds of opposition, the Plaintiff contended that the defence documents sought to be introduced were already on record as they were filed on 26.03.2019 and 07.05.2019. The Plaintiff shall, therefore, not be taken by surprise by introduction of those documents. The court is further of the opinion that the Plaintiff can adequately be compensated by an award of costs of the application occasioned by the 1st and 2nd Defendants' inadvertence.
9. The upshot of the foregoing is that the court finds merit in the notice of motion dated 04.03.2024 and is thus inclined to allow the same. As a result, the court makes the following orders for disposal thereof:
 - a. Leave be and is hereby granted to the 1st and 2nd Defendants to file further defence documents out of time.
 - b. The 1st and 2nd Defendants shall file and serve their supplementary trial bundle within 14 days from the date hereof.
 - c. The Plaintiff is hereby granted leave to file and serve a supplementary list of documents within 7 days upon service by the 1st and 2nd Defendants. The Plaintiff shall also be at liberty to tender additional evidence, if need be.
 - d. Costs of the application to the Plaintiff in any event.

Orders accordingly.

RULING DATED AND SIGNED AT NYANDARUA THIS 16TH DAY OF MAY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:-

Mr. Kamonju for the Plaintiff



Mr. Kamanga for the 1st & 2nd Defendants

Ms. Njeri Wanjiru for the 3rd Defendant

C/A - Carol

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Y. M. ANGIMA

JUDGE

