



Obila v Aroko (Sued as personal and legal representative of the Estate of the Onditi Ouma (Deceased) & 4 others (Environment & Land Case 02 of 2017) [2024] KEELC 5418 (KLR) (15 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5418 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE 02 OF 2017
GMA ONGONDO, J
JULY 15, 2024**

BETWEEN

DAVID AKONGO OBILA PLAINTIFF

AND

**SELLA ANYANGO AROKO (SUED AS PERSONAL AND LEGAL REPRESENTATIVE OF THE ESTATE OF THE ONDITI OUMA (DECEASED) 1ST DEFENDANT
THE COUNTY SURVEYOR, MIGORI COUNTY 2ND DEFENDANT
THE DIRECTOR OF SURVEY 3RD DEFENDANT
THE LAND REGISTRAR, MIGORI COUNTY 4TH DEFENDANT
THE HON ATTORNEY GENERAL 5TH DEFENDANT**

RULING

1. The instant suit is scheduled for hearing of the defendants’ case today. Ms. W. Ochwal learned for the Plaintiff has generated an oral application that the said case be marked as closed.
2. The application is based on the grounds that:-
 - a. The plaintiff’s case was closed on 6th July 2023
 - b. The suit has been pending in court for the last seven years and cited Article 159 (2) (b) of *the Constitution* of Kenya 2010
 - c. The matter was adjourned last time at the instance of the defendant’s counsel.



3. Ms. Bosire learned counsel for the 1st defendant has opposed the application and stated that the 1st defendant, a witness, is indisposed. That she received information on the indisposition, this morning.
4. The 1st defendant's counsel referred to the court's proceedings of 17th January 2024 when hearing of the suit was adjourned due to absence of the plaintiff and his counsel. So, she sought indulgence in form of last adjournment to enable the 1st defendant get a fair hearing herein.
5. The 2nd, 3rd and 4th defendants are absent today. They were duly served as disclosed in the Affidavit of service sworn on 11th July 2024.
6. In the circumstances, is there merit in the plaintiff's application?
7. It is common baseline that the suit is part heard and the plaintiff's case is closed.
8. Indeed, this suit is quite of age. This court is guided by Article 159 (2) (b) (supra) and other provisions of the Constitution and the law that justice shall not be delayed.
9. Moreover, the right to be heard is fundamental and permeates our entire justice system as noted in Articles 25 (c) 48,50(1) and 159 (2) (b) of the Constitution of Kenya 2010 and the case of James Kanyiita Nderitu =vs= Marios Philotas Ghikas & others (2016) eKLR.
10. The revelation from the proceedings of 17th January 2024 and 6th March 2024 is that hearing of the suit was adjourned at the instance of the plaintiff and court did not sit respectively.
11. The reasons given by the 1st defendant's counsel are valid. The 1st defendant's counsel to avail evidence of indisposition on the part of the 1st defendant during next date to be given by this court.
12. Thus, the application to have the defence case closed is not merited. The same is hereby disallowed with costs in the cause.
13. Hearing of the defendants case on priority on 23/9/2024 as last adjournment is granted to the defendants.
14. The 2nd, 3rd, 4th and 5th defendants be served by the Plaintiff's counsel.

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MIGORI THIS 15TH DAY OF JULY, 2024.

G.M.A. ONGONDO

JUDGE

In presence of: -

Ms. W. Ochwal learned counsel for the Plaintiff

Ms. Bosire learned counsel for the 1st defendant

Court Assistant – Tom Maurice

