



Maneno & 3 others v Ibrahim & 3 others (Environment and Land Case Civil Suit 30 of 2016) [2024] KEELC 14184 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELC 14184 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE CIVIL SUIT 30 OF 2016
FM NJOROGE, J
SEPTEMBER 26, 2024**

BETWEEN

**SALIM MWAROPHA MANENO 1ST PLAINTIFF
CHIYONZO NDEGE BAKARI 2ND PLAINTIFF
DANIEL LWAMBI TSOLACHIRO 3RD PLAINTIFF
SAUMU ABDALLA 4TH PLAINTIFF**

AND

**IDDI IBRAHIM 1ST DEFENDANT
YUSUF NEVI 2ND DEFENDANT
TUDOR LOGISTICS LIMITED 3RD DEFENDANT
LAND REGISTRAR COAST REGISTRY 4TH DEFENDANT**

RULING

1. For determination is the 2nd and 3rd Defendants’ Notice of Motion dated 23rd May 2024 seeking the following orders:
 1. That this honourable court be pleased to enlarge the timelines from 27th September 2023 to 17th October 2023 to enable the 1st to 3rd Defendants to comply with the order of payment of throw away costs of Kshs. 15,000 to the plaintiffs as ordered;
 2. That costs of this application be provided for.
2. The application is premised on the grounds set out on its face and the supporting affidavit of Peter Mwebi counsel for the Applicants who deponed that the matter came up for ruling on 28th August 2023 without any Notice to the Applicants and the Applicants were given up to 27th September 2023



to pay the plaintiffs throw away costs of Kshs. 15,000 which was not done. He stated that the delay was unavoidable as neither he nor the Applicants were aware of the ruling since no notice of delivery of the ruling had been given. He averred that prior to the delivery of the ruling he had made enquiries as to when the same would be delivered but got no response. It was his statement that when he learnt of the ruling, he soon thereafter sent a cheque for Kshs. 15,000 to the Plaintiffs' advocate and the same was returned to him after 7 months, a delay he attributes to bad faith on the part of the opposing counsel.

3. The Plaintiffs filed a replying affidavit sworn by Nyange Sharia counsel for the plaintiffs who deponed that the ruling was delivered electronically to all parties via email hence counsel for the Applicants must have been aware of the same; that whereas there is correspondence to court asking about the ruling, there is no evidence that the same was not received via email by the applicant's advocates and the delay in complying with the orders should not be excused.

Disposition

4. The Application was canvassed by way of written submissions. I have considered the grounds upon which the application is founded on, the submissions by the parties as well as the authorities relied upon.
5. The power of the court to enlarge timelines to comply with the orders of the court dated 28th August 2023 is discretionary which discretion I ought to exercise judiciously. The Applicant's case is that failure to comply with the court orders was due to lack of information to the effect that the ruling had been delivered. It is stated that the ruling was delivered without notice. They attached several correspondences ostensibly enquiring of such ruling. The plaintiffs' counsel averred that the said ruling was delivered electronically and therefore counsel for the Applicants cannot say he was not aware of the same.
6. It has been a matter of practice that judgments and rulings are now delivered electronically. However, I make the following vital observations concerning the present application: firstly, the penalty that the court imposed on the applicants was Kshs 15,000/= and a cheque for that amount was evidently drawn on 17/10/2023 less than 2 months after the ruling was delivered. That cheque appears to have been transmitted by the applicant's counsel to the respondent's counsel vide a letter dated 17/10/2023, who acknowledged receipt thereof and who stayed with it uncashed for a period of 7 months. At the end of that lengthy period the cheque was returned to the applicant's counsel vide the respondent's letter dated 17/5/2024 without any explanation save that the sender was under instructions to return it. In the light of the foregoing I am of the view that it is correct that the applicant's counsel learnt of the ruling late and attempted to save the day by meeting some of the terms of the court order.
7. Secondly the ruling was initially scheduled to be delivered on 29/6/2024. It appears from the record that the court was not able to deliver the ruling on that date. It delivered the ruling on 28/8/2023. Having perused through the court file and not found any copy of electronic mail forwarding the ruling to the advocates for the applicants I am not certain that the same was transmitted to them.
8. Thirdly, the applicants have annexed communication by way of letters and electronic mail dated 3/7/2023, 7/7/2023, 21/7/2023 and 30/8/2023 to the court seeking to establish the fate of the ruling. The foregoing implies that the applicants were anxious when they failed to get their ruling on 29/6/2023 and that rather than remain idle, they took action to establish what had happened to their case.
9. Fourthly, the applicants have demonstrated that they were ready to meet the terms set out by the ruling with regard to payment of the penalty.



10. Lastly it can not be understood why the respondent's counsel took seven months to return the cheque instead of summarily rejecting it. The delay of seven months which it took to bring the present application can be partly attributed to that delay.
11. Consequently, this court finds for the applicants in the application dated 23/5/2024. The same is thus hereby allowed in terms of prayer no 1 save to the effect that the period set out in the ruling dated 28/8/2024 is hereby renewed and extended for 30 days from the date of this ruling. The costs of the application shall be in the cause.

RULING DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 26TH DAY OF SEPTEMBER 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

