



REPUBLIC OF KENYA



Mwananchi Credit Limited v Rioki & another (Environment & Land Case E001 of 2023) [2024] KEELC 6842 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6842 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E001 OF 2023**

**JM KAMAU, J
OCTOBER 17, 2024**

BETWEEN

MWANANCHI CREDIT LIMITED APPLICANT

AND

CAROLINE NYAKERARIO RIOKI DEFENDANT

AND

QMACS REALTORS LIMITED RESPONDENT

RULING

1. Before me is an Application dated 12/8/2024 by the 2nd Defendant seeking the following orders: -
 1. That the application be certified as urgent.
 2. That the ex parte proceedings and all consequential orders and judgment if any be set aside wholly and the 2nd Defendant be allowed to enter appearance and defend the case.
 3. That costs be in the cause.
2. The same is supported by Grounds of Opposition to the effect that the 2nd Defendant/Applicant has an arguable and triable Defence to the Claim, that service of the summons to enter appearance was not legally effected upon her hence the same violates the tenets of Order 5 of the *Civil Procedure Rules* and the Applicant had no access to the alleged email of service. She also pleads that there was misjoinder, an illegality in law as she ought not to have been joined in the suit having only been a valuer. The same is also supported by the Affidavit of one Albert Obullo, who describes himself as a Principal Officer of the Applicant sworn on 12/8/2024. He claims to have become aware of the case 2 weeks before making the Application through “a friend who saw it on the Court’s online cause list”. It is then that he found out that the Applicant had been served with a Hearing Notice on 9/7/2024 ‘on an old email that he has not checked for the last 1-2 years and had no access during that period’. He depones that there was



never any service of summons to enter appearance and that the case is malicious. She also attaches a Draft Defence to the Affidavit.

3. In her Replying Affidavit, the Plaintiff through her legal Officer/Secretary, Saleh Jackline depones that the service of the Hearing Notice for 9/7/2024 (admitted by the Applicant) also contained re-issue of summons to enter appearance as well as the Plaintiff and accompanying documents viz, Verifying Affidavit, list of documents, further list of documents, witness statements and further list of documents through a Court Process Server. The same were served on 6/6/2024. She also swore that the email address gmacsrealtors@gmail.com was pulled from the Valuation Reports generated by the Applicant and which address the Applicant had communicated with the Plaintiff as at 21/7/2023, copies of which communications the Plaintiff attached to her Affidavit. Therefore, service was not only properly effected but also the Applicant did receive the summons to enter appearance. The Plaintiff therefore prays that the 2nd Defendant's Application dated 12/8/2024 be disallowed with costs. On the other hand, the 1st Defendant filed Grounds of Opposition and a Replying Affidavit sworn on 23/9/2024 the same date as the aforesaid Grounds of Opposition. In the Grounds of Opposition, the 1st Defendant says that the Applicant has not come to Court with clean hands due to the lies relating to the issue of email address. In her Replying Affidavit, the 1st Defendant claims that the attached draft Defence is only a collection of mere denials and does not raise any substantive issue capable of being deliberated by the court. She finally says that there were a myriad of documents sent to the Applicant alongside the Hearing Notice of 9/7/2024 and she can therefore not purport to have received one and not the others yet all were contemporaneously sent through the same email address.
4. Having invited all the parties herein to make submissions for or against the Application for the stay of the proceedings, setting them aside and starting the case de novo, and having considered and analyzed the said submissions, there is no doubt that the email address gmacsrealtors@gmail.com was all along active and the Applicant kept using it. To this end, the Applicant is guilty of perjury. There were correspondences between the Applicant and the Plaintiff and failure to enter appearance by the Applicant must have been deliberate. I will not delve into the merit of the Draft Statement of Defence though I agree with both Respondents that the same is too general.
5. The Applicant does not merit the prayers she seeks. The Respondents have been so inconvenienced in terms of costs since both have testified and closed their cases as well as filed their written submissions and the same were about to be highlighted leading to the delivery Judgement. Certainly, one of the Parties would now be enjoying the fruits of her successful Judgment. Hearing the case de novo would therefore have the Respondents suffer great prejudice and reverse all the gains made. The Court's discretion does not favour the Applicant. Even as the Applicant pleads that the interests of justice requires that a party should not be condemned before being heard, the same does not apply to an indolent. The interests of the Respondents must equally be considered. However, I will make orders as follows; -
 - a. The Applicant is ordered to pay the court fees in respect of her Draft Defence forthwith and serve the same upon the Respondents within the next 3 days of this Ruling as a prelude to being allowed to participate in this case.
 - b. The Applicant shall then adduce her evidence on a date to be given by the Court.
 - c. The Applicant shall be at liberty to seek leave of the Court to recall any witness who has already testified for cross-examination as she desires.



- d. All the above on condition that the Applicant pays Kshs. 25,000/= to each of the Respondents herein making it a total of Kshs. 50,000/= within the next 15 days as thrown away costs failure to which orders (a), (b) and (c) shall automatically lapse.

These are the orders of the Court.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 17TH DAY OF OCTOBER, 2024.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Brenda

Mr. Ndege for the Plaintiff

Mr. Mwita for the 1st Defendant

Mr. Nyende for the 2nd Defendant/Applicant

Albert Obulo Director for the 2nd Defendant

