



**Mshanga v China Henan International Co-operation Group Company Limited
(Civil Case 245 of 2017) [2024] KEELC 7496 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7496 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
CIVIL CASE 245 OF 2017
FM NJOROGE, J
NOVEMBER 13, 2024**

BETWEEN

GILBERT CHARO MSHANGA PLAINTIFF

AND

**CHINA HENAN INTERNATIONAL CO-OPERATION GROUP COMPANY
LIMITED DEFENDANT**

RULING

The application.

1. The defendants’ application dated 16th December 2019 and brought under Orders 9(9), 10(6), 12(7), 22(22) and 51 (1) and (3) of the Civil Procedure Rules and Sections 1A, 1B, 3A of the Civil Procedure Act has been placed before this court for determination. It seeks the following orders: -
 - a. Spent;
 - b. That the honourable court be pleased to grant leave to the firm of Ruttoh Erica & Associates Advocates to come on record for the defendant in place of Michira Messah & Co Advocates and P.G. Kaingu Advocates;
 - c. that pending inter partes hearing of this application the court be pleased to order a stay of execution of the judgment of this court dated the 31st day of January 2019 and decree therein;
 - d. that pending hearing and determination of this application the court be pleased to order a stay of execution of the judgment; of this court dated the 31st day of January 2019 and decree therein of this court delivered on the 31st day of January 2019 and the decree therein as well as the proceedings of 26th June 2028 and the defendant be granted leave to file a defence in this case;
 - e. that the honourable court be pleased to set aside the judgment



- f. that the costs of this application be provided for.
2. The application is supported by the grounds on the face of the application and supporting affidavit sworn by Chen Jun on even date. The grounds are as follows: that the applicant was condemned unheard; that there was material non-disclosure on the part of the plaintiff that he had disposed of the suit property to another person and thus he lacked proprietary interest therein; that the defendant intends to file a counterclaim against a third party; that the applicant was let down by his advocates who filed appearance but followed it up with no defence and who kept that fact away from it; also the same advocates never informed the applicant of the hearing scheduled for 26/6/2018 and they also never attended it. the defendant avers that no hearing notice was ever served on it and that it came to know of the case when it had been concluded. It is thus urged that the mistakes of the applicant's former advocate should not be visited upon the defendant.

The response.

3. The plaintiff/respondent filed a replying affidavit dated 15/1/2020. The gist thereof is that the defendant admits that it had retained two law firms and was served with summons to enter appearance and no reason has been given as to why the defence was not filed; that it has a potential remedy against the advocates for negligence; that a hearing notice was served upon the two law firms and an affidavit of service was filed to that effect; that the suit land is still registered in the respondent's name and no proof of disposal has been provided and that the draft defence thus raises no triable issue and finally that there is no evidence to support the alleged material non-disclosure.
4. I have set out the above contents of the application and the response which make certain that what I will state as herein below is correct.
5. This court heard the application dated 16/12/2019 and issued a ruling on the said application on 22/1/2021 and dismissed it and it can not be re-heard and another ruling issued unless the orders issued on it have been set aside. Those orders are still in place. In the circumstances there is nothing to be heard. The defendant's counsel raised the issue of the application, urging that it has not heard and that it requires to be heard. I find that the defendant should thus bear the costs of the proceedings between 15/2/24 and the date of this ruling.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 13TH DAY OF NOVEMBER, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

