



**Imala v Impact Investments Limited & 3 others (Land Case
E183 of 2024) [2024] KEELC 13929 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13929 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E183 OF 2024
LN MBUGUA, J
DECEMBER 17, 2024**

BETWEEN

SIKO WOCHE IMALA PLAINTIFF

AND

IMPACT INVESTMENTS LIMITED 1ST DEFENDANT

**JOSEPH NJENGA WANDUI & DAVID OMONDI BOUP T/A PETRO
GAP 2ND DEFENDANT**

**ABDUL WAHID MAALIM T/A SCREEN REPUBLIC GAMING 3RD
DEFENDANT**

HENRY OCHEL T/A FAVOURNATT'S CEREALS 4TH DEFENDANT

RULING

1. This suit was filed by way of an Originating Summons dated 2.5.2024 in which the applicant sought orders inter alia, for the 4 respondents to vacate the suit land L.R. No. 209/10669/5. On 17.10.2024, the applicant withdrew the case against 2nd - 4th Respondents. He also sought orders that his prayers no 1-3 in the Originating Summons be allowed as no response had been filed. Thus the court gave a judgment date for 14.11.2024.
2. The 1st respondent (now the only respondent) has filed an application dated 8.11.2024 seeking orders to set aside the directions given on 17.10.2024 to enable him to defend the suit by way of filing a replying affidavit. The application is supported by the supporting affidavit of Asha Hersi, who avers that their quest to defend the suit has been hampered by the fact that their director has been out of the country. They argue that they have a strong case as they have even filed a case at commercial court, being HCComm/E658 OF 2024 Impact Investment Limited v African Banking Corporation Ltd, Siko Woche Imara and 2 Others due for mention on 17.2.2025. He contends that in the interest of justice, the application should be allowed.



3. On 14.11.2024, the rival parties were represented in court when the court gave directions for the respondent (plaintiff) to file his response by 19.11.2024, but no such response has been filed. I have also disregarded the submissions of the defendant filed out of the given timelines.
4. In the case of Kenya Broadcasting Corporation v National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) [2015] eKLR, the court stated that;

“Where a defendant raises a reasonable defence to the plaintiff’s claim and the defendant has not been privy to obstruction of justice, the court should exercise its discretion in favour of the defendant, even where the judgment entered is regular”.
5. In the case at hand, the court has considered that the matter is at the infancy stage, having been filed in the course of year 2024. The defendant also states that the rival parties have another case at the high court, a fact which has not been rebutted. And finally, the defendant has challenged their eviction in the draft replying affidavit.
6. In the circumstances, I find that it is only fair and just that the defendant be given an opportunity to be heard, in tandem with the principle of the right to be heard. To this end, the application dated 8.11.2024 is allowed such that the directions of 17.10.2024 setting a date for delivery of judgment are hereby set aside. The defendant is directed to file and serve his Replying Affidavit within 14 days from the date of delivery of this ruling. Each party is directed to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17th DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Mugisha for Plaintiff

Kavekye for Defendant

Court Assistant: Vena

