



REPUBLIC OF KENYA



Eugefreight Travel Tours Limited v Souza & another (Environment & Land Case E082 of 2021) [2023] KEELC 132 (KLR) (19 January 2023) (Ruling)

Neutral citation: [2023] KEELC 132 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E082 OF 2021
EK WABWOTO, J
JANUARY 19, 2023**

BETWEEN

EUGEFREIGHT TRAVEL TOURS LIMITED PLAINTIFF

AND

FRANKLIN SUBHAS SOUZA ALIAS FRANKLIN D'SOUZA 1ST RESPONDENT

JOHN KIPKOSGEI KORIR 2ND RESPONDENT

RULING

1. The application before this Court for determination was filed by the Plaintiff and is dated 22nd September 2022. In the said application, the Plaintiff sought for extension of time in respect to the orders granted in the ruling delivered by this court on 4th August 2022.
2. In the Plaintiff's submissions dated 15th December 2022, it was submitted that failure on the applicant's part in compliance with the orders given on 4th August 2022 was due to circumstances beyond their control and hence the need for the court's indulgence.
3. The application was opposed by the 1st Defendant vide a Replying Affidavit sworn on 2nd November 2022, in which the 1st Defendant deposed that the application was an attempt to derail the conclusion of the matter.
4. Having considered the application, rival affidavits and written submissions and authorities cited by the parties, it is clear that the singular issue for determination before this court is whether this court should extend time accorded to the applicant to secure the attendance of Brian Charles D' Souza and filling of additional documents.



5. This Court is guided by Order 50 Rule 6(1) of the Civil Procedure Rules where it is clearly stated that:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise

[Emphasis Mine]

6. In Charo vs. Mwashetani & 3 Others (2014) KLR- SCK, the Supreme Court highlighted the importance of time and the major considerations when determining an application for extension of time:

“In the emerging jurisprudence, the concept of ‘timelines and timeliness’ is generally upheld, as a vital ingredient in the quest for efficient and effective governance under the Constitution. However, even as we take account of that context, we remain cognizant of the Court’s eternal mandate of responding appropriately to individual claims, as dictated by compelling considerations of justice.”

15. In Andrew Kiplagat Chemaringo –vs- Paul Kipkorir Kibet [2018] eKLR, it was stated that: -

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

15. In the instant case, It was averred that the witness was outside the country for an extended period of time which occasioned the failure to comply with the orders. Moreover, the Applicant’s attempts to receive reports from the ongoing investigation had stalled. This Court is cognizant that the matter has progressed well since it was filed.

16. In the foregoing and being guided by the cited authorities, I find that Notice of Motion dated 22nd September 2022 is merited and the same is allowed in terms of prayer 2 with no orders as to costs.

17. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF JANUARY 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Maina for the Plaintiff.

N/A for the 1st Defendant.

N/A for the 2nd Defendant.

Court Assistant; Caroline Nafuna.



