



**Kanyarkwat Group Ranch & 4 others v Joseph & 3 others (Environment & Land  
Case 38 of 2021) [2023] KEELC 15700 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15700 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 38 OF 2021  
FO NYAGAKA, J  
FEBRUARY 16, 2023**

**BETWEEN**

**KANYARKWAT GROUP RANCH & 4 OTHERS ..... PLAINTIFF**

**AND**

**MERINGIRO LOKADIR JOSEPH & 3 OTHERS ..... DEFENDANT**

**RULING**

1. An application for adjournment has been sought in this matter. The reason is that an application dated 08/02/2023 was filed yesterday and that it required of this court to give directions on it first since the application is for stay of proceedings herein pending the hearing of an appeal that has been filed by a Notice of Appeal against a Ruling of this court delivered on 22/11/2022.
2. Counsel has then submitted that even if the court were to order that the hearing proceeds it would be prejudicial to the plaintiffs since he has not talked with any of their 6 remaining witnesses or met any of them. Moreover, he argues that the file is voluminous and he will require time to acquaint himself with it since he has not been in conduct of the matter. Again, he argues that he has no full instructions on the matter hence he cannot be able to properly proceed if the court were to direct so. He has stated that indeed on 17/11/2022 this court ordered the plaintiffs to pay costs of Kshs.19,000/= to the 1<sup>st</sup> - 3<sup>rd</sup> defendants but it did not direct that they be paid before today. He argues that the sum is colossal hence cannot be raised today. He also states that he has not been in conduct of the matter hence many of the issues raised by counsel in opposition to his application are not within his sufficient knowledge and he may not ably answer to them.
3. The application for the court to give directions on the application dated 08/02/2023 which was filed yesterday was deemed by all the three learned counsel of the defendants as an indirect way of asking for adjournment of today's hearing date. They strongly opposed the giving of directions of the application and asked this court to proceed with the hearing of the day as fixed before. They deemed the application for directions, on the application dated 8/02/2023 an indirect way of seeking



an adjournment and which the plaintiff's counsel admitted to in response to the sentiments. They argued that the application was only a gimmick to go round the orders of a last adjournment that had been given by this court on 11/11/2022. They stated, one associating with the sentiments of the other, that the Notice of Appeal show the ruling of this court delivered on 22/11/2022 was filed on 29/11/2022. From then, nothing was ever done or any step taken by the plaintiffs in this matter, including even requesting in writing for typed proceedings up to yesterday when the application was filed, on the eve of hearing. They said that the application filed was brought in bad faith because if good faith were to be demonstrated the application should have been filed immediately the Notice of Appeal was given or filed.

4. They repeated that today's date was taken by consent from November, 2022 hence all along the plaintiffs knew they were to proceed hence they should not have waited for this long. They submitted that the plaintiffs did not explain why they did not wish to proceed with the rest of the six (6) witnesses listed by them, since the application was only about staying proceedings just to ask the Court of Appeal to consider if the other two (2) witnesses whose addition or inclusion was refused can be granted. That, in their view would not stop the hearing from proceeding since the other two (2) proposed witnesses' evidence could be included if the appeal were to succeed.
5. They also emphasized that the applicants have not complied with the order of payment of costs before the hearing date as ordered on 17/11/2022, and that should make the court deny them the application for adjournment and read bad faith on their part. They submitted that the applicants were taking the court for a ride.
6. They reminded the court that the suit was filed under Certificate of Urgency in 2021 and the plaintiffs obtained interim orders of injunction which were consented to in good faith to fast track the matter but now they are delaying the matter at will since they still enjoy those interim orders of injunction, which should have lapsed in a year as the law requires. They submitted that justice is for all parties and not the plaintiffs alone.
7. I have considered the application before me, and the law on it. First counsel for the Plaintiffs sought directions of the court on the application dated 08/02/2023 which was filed yesterday before this court. He did not in any way allude to making an application for adjournment. It only came out that he was actually seeking an adjournment when learned counsel raised the opposition to the giving of directions, and the court asked him to come out clear on whether he sought an adjournment or just directions on the application.
8. It was at that point he admitted that he wished to be given an adjournment, first to have directions on the application, and also, second, on account of the fact that he had no full instructions on the matter, that the file was voluminous, third, that he had not met or seen any of the witnesses before or even up to the time the matter was in court and that he could not reach Mr. Bungei for the plaintiffs at that hour for further instructions.
9. Thus, it turns out that, as submitted by counsel for the defendants, and this court agrees with them, the application dated 08/02/2023 filed on 15/02/2023 was only a gimmick, a device or contrivance put in the file and for use at the disposal of the Plaintiffs to cause an adjournment in this matter. The Application is brought to court at this very late hour in clear bad faith just for reason of occasioning an adjournment. In th circumstances, the best directions I can give on it are that since it was not brought under Certificate of Urgency and it has no hearing date, a date shall be taken for it in the Registry for it.
10. That said, what is now left of me to determine is whether the application for adjournment is merited. The reasons given for it are as summarized above that there was an application filed seeking stay of



proceedings herein, that counsel holding brief had no full instructions and had not met witnesses for the plaintiff to prepare for hearing and that the file is voluminous.

11. First, it is worth noting the orders of 17/11/2022. After part testimony on the part of the Plaintiffs with the 3<sup>rd</sup> witness having been called, and the witness in court on the material date was stood down because he was not among the witnesses listed earlier or whose witness statement had been recorded, counsel for the plaintiffs applied for an adjournment. It was granted but marked as a last one. Then costs of Kshs. 19,000/= were ordered payable together with court adjournment fees. As much as the order did not specifically state that they be paid before today, that was the message communicated to the parties. That was why this Court did not just assess the costs and then direct that they be in the cause. Often directions regarding costs being in the cause are the specific orders this court gives whenever costs though assessed are not to be paid before the next hearing date. Thus, to date the order of payment has not been complied with and it is clear that the plaintiffs are in disobedience thereof.
12. It has been submitted that the sum is colossal and cannot be raised at once today for payment hence the same be in the cause. While that is plausible to the Plaintiffs, this Court thinks otherwise. It gave the parties over three months to pay the costs. There is no good reason that they give for not complying with the orders. But in the interest of justice, I grant them audience but direct that they pay the costs within two (2) weeks, of this order.
13. What remains of me again is to determine whether I should grant the adjournment. On that I find that the plaintiffs wanted to use the filing of the application for stay of proceedings as a tool for seeking adjournment today and in times to come. That has been refused. In any event Order 42 Rule 6 of the [Civil Procedure Rules, 2010](#) provides that the filing of an appeal from a decree, order, judgment or ruling is not a basis for automatic stay of execution or proceedings. There may be a Notice of Appeal filed over the ruling of this court. That is an undisputed fact. That ruling was about refusal to permit two (2) more witnesses to be called by the Plaintiffs in this matter. I see no correlation of the refusal of the additional witnesses sought to be introduced at the time with the remaining witnesses. In any event, as I understand it, the filing of the Notice of Appeal from that ruling did not grant the Plaintiffs an automatic right of stay of proceedings as Order 42 Rule 6 clearly stipulates. In any event there would be greater prejudice to be suffered by the Defendants who are desirous of proceeding with the case than by the plaintiffs if the stay of proceedings would be granted merely because an application dated 08/02/2023 has been filed when it was not filed earlier and no reasons for its delay given, while the plaintiffs are enjoying the interim orders of injunction issued herein, to do so would be an abuse of the process of this court.
14. The plaintiffs were given a last adjournment to today and they have resorted to using tactics of delay this court cannot but into as being meritorious. This is a 2021 suit which has been adjourned severally on account of the plaintiffs. In this era of efforts to reduce backlog of cases and the zero tolerance to adjournment policy being implemented I find that the application for adjournment having been made in bad faith and in the last minute, after the court sought clarification as to whether it was directions sought or adjournment that the plaintiffs clearly stated it as much, is not merited. I refuse it and direct that the hearing proceeds forthwith.

Ruling dated, signed and delivered at Kitale on this 16<sup>th</sup> day of February, 2023.

**HON. DR. IUR FRED NYAGAKA**

**JUDGE, ELC, KITALE**

**Ruling read in the presence of**

Gemenet holding brief for Bungei for Plaintiffs



Chebets for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Bororio for the 3<sup>rd</sup> Defendant

Odongo, State Counsel for 4<sup>th</sup> Defendant

