



REPUBLIC OF KENYA



KENYA LAW
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**Kinuthia v Broadplace Coporate Enterprises & 3 others (Civil Suit E042 of 2019)
[2024] KEHC 3053 (KLR) (Commercial and Tax) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E042 OF 2019
FG MUGAMBI, J
MARCH 15, 2024**

BETWEEN

MARGARET WAIHERA KINUTHIA PLAINTIFF

AND

BROADPLACE COPORATE ENTERPRISES 1ST DEFENDANT

INTER-TROPICAL TIMBER TRADING LTD 2ND DEFENDANT

GEOFFREY NG'ANG'A KARIUKI 3RD DEFENDANT

ESTHER NJERI 4TH DEFENDANT

RULING

Background

1. Before this Court is a Notice of Motion application dated 13th February 2023, brought under Order 51 rule 1 of the *Civil Procedure Rules* and sections 3A and 63e of the *Civil Procedure Act*. The defendants seek an order for leave to be granted leave to file their compliance documents out of time in line with Order 11 of the *Civil Procedure Rules* and for the costs of the application.
2. The application is supported by the affidavit of Geoffrey Ng'ang'a Kariuki, the 3rd defendant herein who confirms that upon being served with the suit papers, he forwarded them to the defendants advocates who entered appearance and filed a statement of defence. That he subsequently relocated from Nairobi to Mpeketoni, hence the delay in complying with Order 11. The defendants confirm that the matter has already gone through pre-trial conference and even been fixed for hearing.
3. The 3rd defendant confesses his inability to facilitate his advocate and the defendants regret the delay and are pleading with this Court to allow their documents to be filed out of time.



4. The application is vehemently opposed through the replying affidavit of Margaret Waithera Kinuthia, the plaintiff, sworn on 11th July 2023. The plaintiff avers that the first case management had been scheduled for 20th February 2020, and since then the matter has come up for mentions, pre-trial conference and directions on 27 different occasions.
5. The plaintiff avers that at no time was the Court told that the defendants' advocates had lost contact with the 3rd defendant. The delay, it is stated, caused the matter to be cited for notice to show cause why the matter should not be dismissed on 31st May 2022. The matter was scheduled for hearing of main suit on 14th February 2023 when the defendants filed the present application.

Analysis

6. The Court has considered the pleadings and evidence presented by the parties in support of their respective positions. This Court enjoys a wide discretion under the *Civil Procedure Act*, meant to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the *Act*, as provided for under section 1A of the *Act*.
7. Section 1A (3) enjoins parties to litigation as well as advocates to also facilitate this overriding objective. The *Act* particularly sanctions that:

“A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.”
8. This Court is also equally alive to the Constitutional imperatives under article 159 which calls for justice without delay. It is imperative to underscore the significance of adhering to the procedural timelines established by the *Civil Procedure Rules* and the directives of this Court. Such adherence is not merely procedural formality but a fundamental cornerstone ensuring the efficient, just, and expeditious resolution of disputes.
9. In determining this matter this Court considers the need to ensure that all parties have a fair opportunity to present their case. That opportunity was availed to the defendants since 2019 when this suit was filed. They failed to present their case for over 4 years now. This right must be balanced against the potential prejudice to the plaintiff, who has complied with the rules and deadlines.
10. The fact that the 3rd defendant relocated out of Nairobi and was not reachable by counsel is not a plausible reason for the prolonged delay of over 4 years in complying with pretrial directions.
11. The relocation of a party, while a factor to consider, does not absolve the defendants of their responsibility to maintain effective communication with their legal representatives and to ensure compliance with the Court's directives. No evidence has been presented to the Court of the efforts made to contact the 3rd defendant or to file the documents by other means.
12. The court has also considered the broader implications of allowing the late submission of the trial bundle, including the potential to encourage disregard for court deadlines and procedures. Upholding the integrity of the judicial process is a key concern.
13. This, coupled with the defendants' previous conduct, particularly their failure to file their trial bundle as required by law on over 27 occasions suggests a lack of diligence or disregard for procedural rules, which must be discouraged at all costs.



14. That said, admitting the defendants' trial bundle at this juncture, while delayed, could potentially ensure that the Court is furnished with all relevant material and evidence it requires to come to a just determination of the issues before the Court.
15. Having considered the merits of the application, the defendants' reasons for delay, the prejudice to the plaintiff, and the imperative of ensuring a fair, just, and expeditious resolution of this matter, this Court finds itself in a position where a delicate balance must be struck.

Determination

16. Accordingly, this Court, in exercising its wide discretion and in furtherance of the overriding objective of the *Civil Procedure Act* and the constitutional mandate to administer justice without undue delay, hereby directs as follows:
 - i. The defendants' application for leave to file their trial bundle out of time is granted, subject to the condition that the plaintiff shall have the costs of this application, assessed at Kshs. 80,000/= for the inconvenience caused to the plaintiff.
 - ii. The defendants trial bundle shall be filed and served within 5 days in default of which it shall be automatically deemed as expunged from the record.
 - iii. The plaintiff is granted leave to file and serve any documents in rebuttal within 7 days of service within time by the defendants.
 - iv. The matter shall proceed to hearing without further delay.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 15TH DAY OF MARCH 2024.

F. MUGAMBI

JUDGE

