



REPUBLIC OF KENYA



Thiongo (Suing as administrator of the Estate of Dedan Thiongo Kingangi (Deceased) v Gicheru & 2 others (Environment & Land Case 1187 of 2015) [2023] KEELC 17051 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17051 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1187 OF 2015**

**LN MBUGUA, J
APRIL 20, 2023**

BETWEEN

JANE WANJIRU THIONGO (SUING AS ADMINISTRATOR OF THE ESTATE OF DEDAN THIONGO KINGANGI (DECEASED) PLAINTIFF

AND

PETER NDUNGU GICHERU 1ST DEFENDANT

SERAH N GICHERU 2ND DEFENDANT

JOSHEPH MUNGAI GICHERU 3RD DEFENDANT

RULING

1. Both the plaintiff and the defendant have closed their cases and the matter was scheduled for mention on February 1, 2023 to confirm the filing of submissions. The defendants filed an application dated January 20, 2023 seeking orders that they be given leave to file a verifying affidavit to the statement of defence and the counterclaim. They contend that the aforementioned document was left out by mistake.
2. The plaintiff has opposed the application vide her replying affidavit dated January 26, 2023 contending that it is unfair to the plaintiff for such a crucial document to be introduced at this stage of the trial when both parties have closed their case, and that she will not have a chance to cross examine the applicants on the contents of the said document.
3. I have considered the rival arguments. I find that the substantive pleading is the defence and counterclaim in so far as the application is concerned. In terms of the provisions of Order 7 rule 5 of the *Civil Procedure Rules*, the import of the document in question is simply to verify the correctness of the averments contained in the pleading.



4. I find that the application is merited. The verifying affidavit is to be filed and served within 7 days, but the respondent is at liberty to file further submissions thereafter touching on the said document. Cost of the application are awarded to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/S Maina for Plaintiffs

Obati holding brief for Oyugi for Defendants

Court assistant: Joan

