



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mavoloni Company Limited v Land Registrar, Thika & 14 others (Environment & Land Case 86 of 2018) [2023] KEELC 16779 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16779 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT & LAND CASE 86 OF 2018**  
**CA OCHIENG, J**  
**APRIL 13, 2023**

**BETWEEN**

**MAVOLONI COMPANY LIMITED ..... PLAINTIFF**

**AND**

**LAND REGISTRAR, THIKA ..... 1<sup>ST</sup> DEFENDANT**

**DIRECTOR OF SURVEY ..... 2<sup>ND</sup> DEFENDANT**

**THE COMMISSIONER OF LANDS ..... 3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**KENYA AFRICAN NATIONAL TRADERS AND FARMERS  
UNION ..... 5<sup>TH</sup> DEFENDANT**

**LONGNECK INTERNATIONAL LIMITED ..... 6<sup>TH</sup> DEFENDANT**

**DOMINIC KAMATA NJOGO ..... 7<sup>TH</sup> DEFENDANT**

**HELLEN NDUTA KAMATA ..... 8<sup>TH</sup> DEFENDANT**

**KENNETH KARATU KIBUNJA ..... 9<sup>TH</sup> DEFENDANT**

**YAHYA MUHAMED SULEIMAN ..... 10<sup>TH</sup> DEFENDANT**

**NAIMA SULEIMAN ..... 11<sup>TH</sup> DEFENDANT**

**DOMINIC KIKUI ..... 12<sup>TH</sup> DEFENDANT**

**ELIAS KIMANI ..... 13<sup>TH</sup> DEFENDANT**

**TERESIA NDUKU ..... 14<sup>TH</sup> DEFENDANT**

**STANDARD CHARTERED, MANAGEMENT'S AGENTS LIMITED .... 15<sup>TH</sup>  
DEFENDANT**



## RULING

1. What is before Court for determination is the 12<sup>th</sup> Defendant's Notice of Motion Application dated the November 29, 2022 where he seeks the following Orders:
  1. That the 12<sup>th</sup> Defendant/Applicant be granted leave to file and serve his Statement, List of Documents and List of Witnesses and that the Statement, List of Documents and Witnesses annexed to the Affidavit in support hereof be deemed to be duly filed and served upon payment of the requisite Court fees.
  2. That the costs of this Application be in the cause.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Dominic Kikui where he deposes that owing to the indisposition of his late father, he was unable to visit his Advocate's Chambers for purposes of signing the statement and giving further instructions in respect to the suit herein. He avers that his father was indisposed for a long period and he was always on standby to attend to his emergencies, but he later passed on. Further, that his late father's demise had an impact on his life and he became disoriented. He confirms that he has never lost interest in the instant suit as the Court record shows that his Advocate has been representing him. He hence seeks leave to be allowed to file his statement and related documents.
3. The Plaintiff opposed the instant Application by filing a Replying Affidavit sworn by Joseph Munyao Mutisya, it Chairman where he deposes that the said Application is frivolous, vexatious, lacks merit and an abuse of the court process. He contends that the grounds set out in the Application including the facts as stated in the Supporting Affidavit do not warrant the grant of the orders sought. He insists that the instant Application has been brought too late in the day and the Applicant has deliberately failed to comply with Order 3 Rule 2 of the *Civil Procedure Rules*. He states that if the instant Application is allowed, the Plaintiff will be seriously prejudiced as it closed its case and will have no opportunity to reopen it or call additional evidence. Further, that he has been in possession of his documents since 1993 and has not explained why he waited for every other party and in particular the Plaintiff to close its case and then seek to file the said documents. He reiterates that the directions in respect to the hearing were taken long time ago and the matter subsequently set down for hearing.
4. None of the other Defendants opposed the instant Application.
5. Parties opted not to file submissions to canvass the instant Application.

### **Analysis and Determination**

6. Upon consideration of the instant Notice of Motion Application including the respective Affidavits as well as the annexures therein; the only issue for determination is whether the 12<sup>th</sup> Defendant should be granted leave to file and serve his Witness Statement, List of Documents including List of Witnesses.
5. The 12<sup>th</sup> Defendant has sought for leave to file and serve his Witness Statement as well as List of Documents and Witnesses. He has explained that he failed to file the said Witness Statement including documents on time due to the indisposition of his father whom he was taking care of, hence he was not able to visit his advocate's office to sign the documents as well as give further instructions. The Plaintiff has vehemently opposed the instant Application insisting that it will be prejudiced since it had closed its case and that the 12<sup>th</sup> Defendant took long to file the Statement including List of Documents.



6. Order 3 Rule 2 of the *Civil Procedure Rules* stipulates thus:

All suits filed under Rule 1(1) including suits against the government, except small claims, shall be accompanied by—

- a. the Affidavit referred to under Order 4 Rule 1(2); (b) a list of witnesses to be called at the trial; (c) written statements signed by the witnesses excluding expert witnesses; and (d) copies of documents to be relied on at the trial including a demand letter before action: Provided that statement under sub rule (c) may with leave of court be furnished at least fifteen days prior to the trial conference under Order 11.”

7. While Section 3A of the *Civil Procedure Act* provides that:

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

8. I note as per the Court Record, on the June 14, 2019, the Plaintiff was allowed to amend its Originating Summons. Further, on the June 26, 2021, parties were granted leave of 45 days to file additional documents and witness statements. As per annexure “DK 1” in the Supporting Affidavit, which is a burial permit for the 12<sup>th</sup> Defendant’s father, I note he died on June 27, 2021 which was around the same time parties had been granted leave to file additional documents and Witness Statements.

9. Insofar as the Plaintiff has opposed the instant Application, I have had a chance to peruse the annexed Witness Statement including documents and I opine that filing of the same is not prejudicial to the Plaintiff as claimed. Further, in the interest of justice, I find the 12<sup>th</sup> Defendant’s reasons explaining the delay in filing the statement and list of documents plausible. It is my considered view that the Plaintiff has had a chance to peruse the Witness Statement as well as the documents attached to the Supporting Affidavit and can be granted an opportunity to reopen its case or call additional evidence if need be. In the foregoing, while relying on the legal provisions cited above, I will exercise my discretion and allow the 12<sup>th</sup> Defendant to file his Witness Statement including List of Documents.

10. In the circumstances, I find the Notice of Motion Application dated the November 29, 2022 merited and will allow it but make no order as to costs.

11. I direct that the 12<sup>th</sup> Defendant do file and serve his Witness Statement including List of Documents as annexed to the instant Application within seven (7) days from the date hereof.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 13<sup>TH</sup> DAY OF APRIL, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

