



**Board of Directors Cherobu Board of Directors Cherobu Multipurpose Company Limited
v Others (Civil Case 64 of 2011) [2020] KEHC 9206 (KLR) (17 June 2020) (Ruling)**

Neutral citation: [2020] KEHC 9206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL CASE 64 OF 2011
AN ONGERI, J
JUNE 17, 2020**

BETWEEN

**BOARD OF DIRECTORS CHEROBU BOARD OF DIRECTORS CHEROBU
MULTIPURPOSE COMPANY LIMITED PLAINTIFF**

AND

ELIJAH MILGO & 7 OTHERS DEFENDANT

RULING

1. The Application coming for consideration in this ruling is the Notice of Motion dated 20/7/2021 seeking the following Orders.
 - (i) That the 1st, 2nd & 3rd Defendants be granted leave to file a further list of documents.
 - (ii) That the costs of the Application be provided for.
2. The Application is based on the grounds on the face of it and supported by the affidavit of Franklin Obondo Okoko dated 20/7/2021 in which is deposed as follows:-
 - i. That the 1st, 2nd, and 3rd defendants together with other defendants were sued by the plaintiff for an order of injunction among other prayers sought in the plaint;
 - ii. That the 1st, 2nd and 3rd defendant had filed list of documents dated 30/9/2011 on 4/10/2011 through the firm of M/S Nyigei & Co. Advocates before the firm of M/S Obondo Koko & Co. Advocates came on record;
 - iii. That M/S Obondo Koko & Co. Advocates have now prepared a further list of documents which the 1st, 2nd, and 3rd defendants intends to file;
 - iv. That the said application will not in any way prejudice the respondent/ plaintiff, but will be able to assist the court in narrowing down the issues and finally determining the case;



- v. That the draft further list of documents raises pertinent issues which cannot be ignored in the determination of this matter;
 - vi. That the law requires that leave is sought for purposes of filing further documents;
 - vii. That this court has wide powers and discretion to grant the orders sought.
3. The Plaintiff/Respondent filed grounds of opposition and stated that the documents the 1st, 2nd & 3rd Defendants wish to rely on relate to 3rd parties and that they are not connected to the proceedings herein.
 4. Further, that Cherobu Multipurpose Co. Ltd and “Cherobu Dairy Farmers Co-operative Society Ltd” are two distinct entities.
 5. The parties filed written submissions in the application dated 20/7/2021 which are as follows:-
 6. The 1st, 2nd, and 3rd defendants/applicants submitted that the court has discretionary powers to grant leave to the applicants to file additional documents, and such discretion must be exercised judiciously and in a fair manner.
 7. The defendants/applicants also submitted that the applicants wish to tender additional evidence which will aid their defence of the suit and help the court narrow down on the issues in this matter, and also the plaintiff will not be prejudiced if the applicants are allowed to produce additional evidence since the plaintiff will be accorded sufficient opportunity to cross examine the applicants on the said documents and if necessary recall any witnesses to rebut the contents of the said documents.
 8. The plaintiff/respondent on the other hand submitted that documents the defendants/applicants seek to rely on, have no relevance to the facts in issue in the suit but are an afterthought aimed at mocking the cause of justice to the detriment of the plaintiff.
 9. The plaintiff/applicant also submitted that allowing the documents to be produced in court will prejudice the plaintiff who has already closed his case, and will further infringe on its constitutional rights under Article 50, and also that the application by the defendants/applicants is aimed at delaying justice to the plaintiff.
 10. The sole issue for determination in this application is whether the 1st, 2nd and 3rd Defendants should be granted leave to file and serve further documents.
 11. The Defendant/Applicant submitted that the Plaintiff/Respondent will not be prejudiced by the production of additional documents since the Plaintiff can be allowed to recall witness to rebut the evidence adduced by the Defendants.
 12. I have considered the submissions by both parties. The documents the 1st, 2nd and 3rd Defendants are seeking to rely on were not in their possession when this suit was filed.
 13. It is in the interest of Justice that all the evidence be tabled before this Court to enable the Court reach a final determination of the suit.
 14. I also find that the Plaintiff will not suffer prejudice that cannot be compensated by an award of damages.
 15. In *Philip Keipto Chemwolo & another v Augustine Kubende* [1986] eKLR, the Court of Appeal stated as follows: - “unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline.”



16. I allow the 1st, 2nd and 3rd application dated 20/7/2021 on the following conditions:-

- (i) That the said documents be served upon the Plaintiff within 7 days of this date.
- (ii) That the Plaintiff be at liberty to file further documents in response thereto and to recall their witness for cross-examination on the said documents.
- (iii) That the 1st, 2nd & 3rd Defendants to pay the Plaintiff costs of this application assessed at Kshs.20,000/= before the next hearing date.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 17TH DAY OF JUNE 2020.

A. N. ONGERI

JUDGE

