



**Murunga v Nilestar Holdings Limited & 3 others (Environment & Land
Case 1549 of 2013) [2023] KEELC 21128 (KLR) (16 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21128 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1549 OF 2013**

**JO MBOYA, J
OCTOBER 16, 2023**

BETWEEN

SULEIMAN MURUNGA PLAINTIFF

AND

NILESTAR HOLDINGS LIMITED 1ST DEFENDANT

GREEN VALLEY LIMITED 2ND DEFENDANT

NATIONAL LAND COMMISSION 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. The Learned counsel for the Plaintiff herein has made an application to be allowed to call one more witness, namely, Professor Mohammed Swazuri; who is the former Chairperson of the National Land Commission to attend court and to give evidence as pertains to the contents of the Letter dated 18th February, 2014 and in particular, the circumstances under which the Letter in question was authored/written.
2. On the other hand, the counsel for the Plaintiff has contended that the same only realized that the said witness will be a crucial witness, when he (Learned Counsel) was undertaking Pre-trial briefings with the Plaintiff herein.
3. Furthermore, the Learned Counsel for the Plaintiff has added that the evidence of the said witness will be crucial and paramount; and will enable the Honourable court to justly determine the dispute before the court.
4. Despite the application by and on behalf of the Plaintiff, it is important to point out and to underscore that it was incumbent upon the Plaintiff to discern the nature and scope of his case and also to appraise



the facts attendant thereto and thereby to file and serve a List or further List of witnesses in accordance with the provisions of Order 3, Rule 2 of the *Civil Procedure Rules*, 2010.

5. Furthermore, if the Plaintiff was unable to file the List of witness containing the name(s) of the said witness at the onset/outset in accordance with the provisions of Order 3 Rule 2 of the *Civil Procedure Rules*, 2010; then the Plaintiff ought to have taken advantage of the Provisions Order 11 of the *Civil Procedure Rules*, 2010; which would have enabled same to file a further List of witnesses and in particular, to include the name of the proposed witnesses.
6. However, to the extent that the Plaintiff did not do so; I am of the considered opinion that the Plaintiff cannot now be heard to say that same requires to call and/or summon the proposed witnesses to attend court and give evidence as pertains to the letter dated the 18th February 2014.
7. Secondly, it is also important to point out that the Letter which is being alluded to has already been produced and admitted as an Exhibit at the instance of the Plaintiff. Consequently and in this regard, the said Letter constitutes evidence by and on behalf of the Plaintiff.
8. To my mind, insofar as the Letter has already been produced and admitted as an Exhibit, the proposed witness will not add any value thereto or otherwise; taking into account the import and tenor of the provisions of Sections 97 and 98 of the *Evidence Act*, Chapter 80 Laws of Kenya; which essentially underscores that a document which has been reduced into writing shall be construed on the basis of the contents thereof and not otherwise.
9. Thirdly, it is also not lost on the court that the request for issuance of the witness summons to the proposed witness has also been made too late in the day taking into account the provisions of Order 16, Rule 1 of the *Civil Procedure Rules*, 2010; which clearly stipulates and underscores the statutory timelines for applying for a witness summons.
10. Lastly, I wish to point out that to allow the application by the Plaintiff at this juncture, shall cause and/or occasion undue prejudice and a grave miscarriage of justice; taking into the account the ripple effect that such an order may have on the Defendants, who may be called to file further documents and List of witness, if any. In this regard, the hearing and determination of the matter herein, (which has already been in the corridors of the court for more than eleven (11) years), shall continue to be delayed and thereby breaching the constitutional requirement entrenched vide Article 159 (2) (b) of the *Constitution*, 2010.
11. Surely, the Parties and their Legal counsel ought and should be informed that the Rules of procedure and in particular, the provisions of Order 3 Rule 2 and Order 11, Rule 11 of the *Civil Procedure Rules*, 2010; were not made in vain.
12. For good measure, any Litigant who fails to abide by the said Rules, may have to suffer the consequences of breach and violation of same. Instructively, the significance of the Rules of procedure were articulated and underscored by the Court of Appeal in the case of *Hamisi Maimai Kakutia v Peris Pesi Tobiko and others* [2014] eKLR; where the court stated and held as hereunder;-

“A five judge bench of this Court expressed itself very succinctly but a few days ago on this precise point is the case of *Mumo Matemu v. Trusted Society Of Human Rights Alliance & 5 Others* Civil Appeal No. 290 of 2012 as follows;-

“In our view it is a misconception to claim, as it has been in recent times with increased frequency, that compliance with rules of procedure is antithetical to Article 159 of the *Constitution* and the overriding objective principle under



Section 1A and 1B of the *Civil Procedure Act* (Cap 21) and Section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases.”

13. Consequently, and in the premises, this court is not persuaded to grant the Application by and at the instance of the Plaintiff herein, which Application has been made too late in the day and in any event, is likely to occasion undue prejudice.
14. In short, the Application be and is hereby declined.
15. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF OCTOBER 2023.

OGUTTU MBOYA

JUDGE

