



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 285 OF 2013**

**HEZEKIEL OIRA.....PLAINTIFF**

**VERSUS**

**ETHICS AND ANTI-CORRUPTION COMMISSION.....1<sup>ST</sup> DEFENDANT**

**OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS..2<sup>ND</sup> DEFEDANT**

**RULING**

This case is part heard. The plaintiff has already completed his evidence both in chief and under cross examination. When this case resumed on 30th May, 2018, it transpired that the plaintiff had lodged a supplementary list of documents made of copies of three newspaper cuttings and objection was raised by the defendants.

The court then allowed rival submissions on the objection. It is the defendants' position that the plaintiffs by introducing these documents intends to cover or fill the gaps that emerged during cross-examination. This is prejudicial to the defendants.

On the other hand the plaintiff justifies the introduction of these documents on the grounds that their exclusion was inadvertent and in any case, the plaint contains extracts of the documents sought to be introduced and that, no prejudice will be occasioned to the defendants if these documents were to be admitted.

The list of the plaintiff's documents which were first filed with the plaint on 20<sup>th</sup> July, 2013 refers to newspaper cuttings at item no. 6. The documents sought to be produced at this stage were not among those cuttings. Order 3 Rule 2 requires that all suits filed shall be accompanied by, among other things, copies of documents to be relied on at the trial. The plaintiff was clearly in breach of that provision for failing to include the documents now sought to be introduced.

Further, Order 11 of the Civil Procedure Rules provides for pre-trial directions and conference. At that stage, the court is mandated to ensure that the parties have complied with Order 3 Rule 2 and Order 7 Rule 5 that require the plaintiff and the defendants respectively to comply therewith. The plaintiff did not raise these issues at that stage.

Once that pre-trial conference is conducted no other documents may be filed except with the leave of the court. In this case the plaintiff did not seek that leave and the said documents are irregularly on the record. That notwithstanding, I have related those documents to the plaint and noted that they were quoted extensively therein. In that case, any prejudice may not have been visited upon the defendants. In any case, the defendants are yet to call their witnesses who may offer a rejoinder to any evidence presented by the plaintiff and his witnesses.

The court must however deprecate the conduct of parties who do not comply with the Civil Procedure Rules, which are intended to aid the proper adjudication of disputes. I have the discretion to admit those documents which I hereby do. It remains upon the plaintiff's counsel to see how the relevance of those documents may be factored in the plaintiff's case, considering that the plaintiff has already testified.

**Dated, signed and delivered at Nairobi this 18<sup>th</sup> Day of June, 2018.**

**A. MBOGHOLI MSAGHA**

**JUDGE**