

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL AND TAX DIVISION

CIVIL CASE NO 392 OF 2003

PETER FREDRICK MBUGUA.....PLAINTIFF

VERSUS

MERCANTILE LIFE AND GENERAL

ASSURANCE CO. LTD.....DEFENDANT

RULING

1. The Plaintiff's case was commenced for trial on **16th May 2017**. The Plaintiff testified in chief and cross examined by defence Counsel. At the close of cross examination the Plaintiff applied to step down and to be permitted to produce cheque stubs that had been omitted. The case was adjourned on that day.

2. The Plaintiff has now filed a **Notice of Motion** dated **10th July 2017**, seeking leave to file further documents that is bank statements and stubs out of time. The Application is supported by the Plaintiff's affidavit where he stated that the documents he seeks to file were not available when the case went to trial and that they are vital to his case.

3. The Defendant filed a ground of opposition to the effect that the Application was an afterthought. The Defendant did not file a Replying Affidavit or submissions.

4. Having considered the Application, which is unopposed on factual basis, and being guided by the constitutional principle that justice should be administered without undue regard to procedural technicalities, and also considering the overriding principle in The **Civil procedure Act**, I find there is merit in the Application. The Plaintiff is entitled to have a fair hearing.

5. Accordingly, the Plaintiff shall within 7 days from today file and serve further documents in this matter. At the reading of this ruling a further hearing date shall be fixed for this matter which is part heard. Costs of the **Notice of Motion** dated **10th July 2017**, shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 29th day of November, 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant

MARY KASANGO

JUDGE