



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT HOMA BAY

ELC CASE NO 36 OF 2021

(FORMERLY MIGORI ELC NO. 103 OF 2017)

AND

(FORMERLY KISII ELC NO 366 OF 2013)

SILVANCE ODHIAMBO ABAYO.....PLAINTIFF

VERSUS

MARTIN ONYANGO REGE.....DEFENDANT

RULING

1. I have heard counsel for the respective parties regarding two witnesses' statements by the defendant's counsel. The same duly served on the Plaintiff Advocate. Today, the Plaintiff's counsel laments of delay thereof.
2. The plaintiff's counsel has objected to their admission herein and that they be expunged for the record. That the defendant's case be deemed duly closed.
3. The defendants' counsel has told the court, inter alia, that that the suit was reinstated after he came on record due to mistake of counsel from whom he took over the matter and that the defendant be not condemned unheard.
4. I bear in mind the history of this suit and the nature of it. **I further note Article 159(2) (d) of the Constitution of Kenya, 2010.**
5. In view of the above and in the spirit of **Articles 48,50(1) as read with Article 25(c) of the Constitution of Kenya, 2010** and being guided by the decision in the case of **Philip Chemwolo and another-versus-Augustine Kubende (1986) eKLR**, I find the plaintiff's prayer unmeritorious. The same fails.
6. Wherefore, I disallow the plaintiff's application on the following terms:
 - a. The defendant's witnesses' statements be presented in evidence to meet the ends of justice.
 - b. The defendant's case to proceed without delay; **see Article 159(2) (b) of the Constitution (supra).**
 - c. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 27TH JANUARY, 2022

G.M.A ONG'ONDO

JUDGE

Present;

a. Ms. Opondo, learned counsel for the plaintiff

b. Mr. Kisia, learned counsel for the defendant.

c. Okelo, court assistant