



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 343 OF 2011**

**LAWRENCE C. NJERU.....PLAINTIFF**

**VERSUS**

**HON. DANSON BUYA MUNGATANA.....DEFENDANT**

**RULING**

1. This matter is part heard. The Plaintiff’s case has been heard and closed. When this matter came up for defence hearing on 26<sup>th</sup> September, 2016, the Defendant’s testimony was taken and at the end of it, learned counsel for the Defendant intimated that he would have closed the defense case but he had instructions to call a further witness. It was argued that no prejudice would be suffered by the Plaintiff since counsel for the Plaintiff will have the chance to cross examine that witness.

2. That application was objected to and was termed as a plot to waste courts time. It was argued that the defence counsel knew of the existence of that witness at the time of preparing the case and it was unclear why he opted to bring him this late in the day. That bringing the witness at this stage amounted to bringing in new evidence and it must have been an afterthought.

3. Having heard the arguments by both parties, I wholly concur with the Plaintiff that the defendant all along knew about this witness that he intend to call. The Defendant also participated in the pre-trial conference under Order 11 and on the 31<sup>st</sup> August, 2015, his advocate was present in court and he informed the court that he had complied with Order 11. This court has not been told why the statement for this witness had not been filed in court earlier.

4. However, in the interest of justice and in line with the provisions of Article 159 (2) (d) of the Constitution of Kenya 2010, the defendant is hereby granted leave to file witness statement for the additional witness. The same to be filed with fourteen (14) days from today.

**Dated, signed and delivered at Nairobi this 17<sup>th</sup> day of November, 2016.**

.....

**L NJUGUNA**

**JUDGE**

**In The presence of**

..... **for the Plaintiff**

..... **for the Defendant.**