



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC SUIT NO. 556 OF 2010**

**FLORENCE W MBUGUA**

(suing as administrator of the Estate of

**ROSEMARY WANJIKU MUNYUA (Deceased).....APPLICANT**

**=VERSUS=**

**BEATRICE N MAINA ( Administratrix,**

**Estate of JOSEPH M MUNYUA (Deceased)..... RESPONDENT**

**RULING No. 1**

I have considered the objection made by **Mr. Ombwayo** for the Respondent and the response made by **Mr. Mwariri** for the Applicant. It is clear that the documents were not admitted nor produced by the witness who is also the Applicant during her evidence in chief.

I have also keenly perused the record and I have noted that during cross examination, the witness conceded that indeed her documents and witness statement had not been produced during her evidence in chief. As such, the same cannot be produced during Re-Examination.

The role of re-examination is to clarify what was stated in cross examination. Under our legal system a party cannot be allowed to produce and adduce new documents. The witness is therefore barred from producing new documents and witness statement that was not produced during evidence in chief.

Counsel for the Applicant Mr Mwariri also requested this court to allow the said documents and do substantive justice as provided for under **Article 159(2) (d) of the Constitution**. However, it is the position of this court that **Article 159(2)(d)** is not a panacea to procedural errors occasioned by counsels.

Courts are guided by well established procedures which outline how trials ought to be undertaken. The objection is upheld.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI IN OPEN COURT THIS 24TH DAY OF FEBRUARY 2022.**

**E. K. WABWOTO**

**JUDGE**

**In Presence of: -**

**Mr. Mwariri for the Applicant.**

**Mr. Ombwayo for the Respondent**

**Court Assistant: Caroline Nafuna.**