



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL SUIT NUMBER 248 OF 2006
CHEVRON KENYA LIMITED
(FORMERLY CALTEX OIL KENYA LIMITED.....PLAINTIFF
VERSUS
MUVIR HOLDINGS LIMITED.....1ST DEFENDANT
CITY COUNCIL OF NAIROBI.....2ND DEFENDANT

R U L I N G

The question before the court is whether the new bundle of documents filed by the 1st Defendant and 2nd Defendant and dated 27th February, 2015 together with a new witness statement of the same date should be admitted into the file record or not.

It is the 1st Defendant's case that the court having allowed a counterclaim to be filed into the original case joining a new Defendant, the 3rd Defendant, the court should expect additional documents including new evidence to sustain the counter-claim.

The Plaintiff and the 3rd Defendant in the counterclaim opposed the introduction of new evidence in a new statement which may prejudice their case and defence to the counterclaim. They argued that the new statement should have been introduced before they called their evidence to the counterclaim so that they could be prepared for it.

On the other hand, the 1st Defendant stated that the new bundle is really a reorganization of the already introduced material and the new witness statement of the 1st Defendant is also a reorganization of the old statement with only one or two new points which do not add any new twist to the case. Mr. Kihara also stated that he was prepared to delete from the statement paragraphs 4, 5 7 and 8.

I have carefully considered the objection by the Plaintiff and 3rd Defendant in the counterclaim. I recall the court adjourned the argument and gave them a day to go through the new statement to see where it prejudiced their clients. However, the next day they did not appear to be sure of what position they would take. They were not sure whether the statement contained new prejudicial materials or not.

In the view of the court what the new statement contained is not really out of the blues. One way or the other the so called new materials had popped up during the trial. What could be called new was the

revelation of unrevealed shareholding of the suit property and the purported/ or real transfer of the same to a third party. It was revealed that such new ownership will be challenged in a different forum of this court. At the end of the day in so far as the suit property is the ward of this court, even such transfer and alleged new ownership will be found relevant in this trial.

The question of occupation of the suit premises from time to time is clearly not a new subject. If it is new, it will nevertheless be relevant in relation to this trial where the subject matter is the suit property itself.

The most unfortunate situation in this trial has been the unpreparedness or apparent unpreparedness of the parties. The Plaintiff showed such conduct and the court severally had to give indulgence to it to enable trial to proceed. The 1st Defendant has started to show similar tendencies, leading to this unnecessary side shows.

There is no doubt in addition, that the 1st Defendant should have taken steps to warn the court and the other parties of introduction of the alleged new statement. If he could have done so, no court's time could have been wasted as it has.

All said, I am of the view that the 1st Defendant should, as it was done to the Plaintiff time and again, be given opportunity to fully put up its case. The re-organized bundle will be admitted as the Plaintiff and the 3rd Defendant in the counterclaim did not pick out any one document offending or prejudicing it. The witness statement is also admitted subject to deletion of paragraphs 4, 5 7 and 8 as conceded by the 1st Defendant.

For what appeared to be clumsy a approach on the documents and for seeking admission late in the day which led to this objection the 1st Defendant will pay costs of the objection which the court assess at Ksh.2,500/- to Plaintiff and Kshs.2,500/- to 3rd Defendant in the Counterclaim, payable before next date. He will also pay Ksh.1,000/- to the court for court's wasted day. Orders accordingly.

Dated and delivered at Nairobi this 12th day of March, 2015.

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D A ONYANCHA

JUDGE