



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO 30 OF 2012**

**MADALINA WAMBUI MARETE(SUING AS**

**ADMINISTRATIX**

**OF THE ESTATE OF COSMAS MARETE(DECEASED.....1<sup>ST</sup> PLAINTIFF**

**JOSEPH MUGIJA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JULIUS KIGUTU.....DEFENDANT**

**R U L I N G**

This Ruling has been spawned by the Submission of Mr. Nahaashon Karuti, the Plaintiffs' Advocate, today that witness statements are procedural technicalities. This issue arose after Mr. Wamache, holding brief for Miss Thibaru, the defendant's advocate, told the Court that Miss Thibaru was not ready to proceed with the hearing of this case as her sister had died and she was attending her burial today. Mr. Karuti responded by saying that Court matters took precedence even over death. Whereas I agree that Court matters take precedence over many things, I do not agree that they take precedence over death. I find this statement rather insensitive.

Regarding the claim by Mr. Karuti that witness statements are procedural technicalities, I see the need to have recourse to the provision of the Constitution which deals with this matter. Section 159 (d) states as follows:-

**“Justice shall be administered without undue regard to technicalities”.**

It is a cardinal principle of the rule of Law that evidence of parties should be taken before a case can be determined. It is also a Cardinal rule that any party to a suit should not be ambushed with evidence introduced in a higgeldy piggeldy unstructured manner. There is need for issues facing parties in a dispute to be known notwithstanding their positions in the suit, whether plaintiffs or defendants.

The requirement for parties in Civil Suits to file witness statements is buttressed by Orders 3 rule (2) (c), Order 7 Rule 5 (c) and Order 11 Rule 5 (2) (c). The requirement that witness statements be filed is a legal requirement. It can never be a procedural technicality.

In the circumstances, I find that witness statements are not procedural technicalities as envisaged by Article 159 (d) of the Constitution of Kenya. Accordingly, I dismiss Advocate Nahashon Karuti's Oral Submissions that witness statements amount to procedural technicalities.

**Delivered in open Court at Meru this 22<sup>nd</sup> day of October, 2015 in the presence of:-**

Daniel /Lilian

Nahashon Karuti for the Plaintiffs

Wamache h/b Thibaru for the Defendants.

**P. M. NJORGE**

**JUDGE**